TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 47

LINCOLN FEDERAL LABOR UNION #19129, AMERICAN FEDERATION OF LABOR, NEBRASKA STATE FEDERATION OF LABOR, ET AL., APPELLANTS,

vs.

NORTHWESTERN IRON AND METAL COMPANY, DAN DIEBELHOUSE, STATE OF NEBRASKA AND NEBRASKA SMALL BUSINESS MEN'S ASSOCIATION

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEBRASKA

FILED APRIL 22, 1948.

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[fols. 1-2]. [Captions omitted]

[fols. 3-5] IN THE DISTRICT COURT FOR LANCASTER COUNTY, NEBRASKA

LINCOLN FEDERAL LABOR UNION NO. 19129; AMERICAN FEDERATION OF LABOR; Nebraska State Federation of Labor; and Henry Reichel, individually and as president of said Lincoln Federal Labor Union No. 19129, Plaintiffs and Representatives of a Class,

vs.

NORTHWESTERN IRON AND METAL COMPANY, A CORPORATION; Dan Giebelhouse; and State of Nebraska, Defendants and Representatives of a Class.

PETITION—Filed February 19, 1947

[fol. 6] Come now plaintiffs and for their petition against the defendants allege:

I

The Nature and Purpose of This Suit

This is a suit of a civil nature to obtain a declaratory judgment with respect to the interpretation, effect and legality of the so-called "Anti-Closed-Shop Amendment" to the Nebraska Constitution, and also to obtain certain equitable relief within the equity jurisdiction of the Nebraska courts. The rights, status and legal relations of the parties herein are affected by the adoption of such amendment to the Nebraska Constitution, and the rights, status, duties and obligations of such parties have been made uncertain and insecure by reason of such amendment, all as hereinafter more fully set forth. The purpose of this action is to obtain a declaration of the rights, status and legal relations of such parties under such amendment and, in addition, to obtain the equitable relief hereinafter more fully described.

The amendment in question, commonly called and hereinafter referred to as the "Anti-Closed-Shop Amendment," was adopted by vote of the people of the State of Nebraska on November 5, 1946, as an amendment to the Constitution of the State of Nebraska. Such law purports to prohibit any

form of union-shop provision in existing or future agreements between employers and employees. The term "union shop" or "union security agreement", as used in this petition, includes any and all agreements between employers and labor organizations or other representatives of employees wherein membership in a labor organization is required as a condition of employment.

The issues include the construction and validity of the [fol. 7] said amendment, as well as the constitutional rights of the plaintiffs and their constitutional immunities, and the rights and obligations of the parties hereto under said amendment; the rights, status and legal relations of the parties with respect to the union shop agreement herein involved; and the right of plaintiffs to the said equitable relief.

II

The Parties and the Controversy

1. At all times herein mentioned, the plaintiff American Federation of Labor was and now is a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations or labor unions, including the plaintiffs Lincoln Federal Labor Union No. 19129 and Nebraska State Federation of Labor, the said affiliated associations having an aggregate membership of several million persons in all States of the United States, including the State of Nebraska, and in Canada, and all of said members are classified according to their various trades and industries into separate, voluntary and unincorporated associations of labor unions. The American Federation of Labor maintains its principal office in the City of Washington, District of Columbia, and William Green is its president.

2. At all times herein mentioned, the plaintiff Nebraska State Federation of Labor was and now is a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations or labor unions, including the plaintiff Lincoln Federal Labor Union No. 19129, and including those known as national or international unions and their local union organizations affiliated with the American Federation of Labor, operating in the State of Nebraska. The Nebraska State Federation of Labor has its head-

quarters in the City of Omaha, State of Nebraska, and [fol. 8] John J. Guenther of that City is its president.

3. The American Federation of Labor and the Nebraska State Federation of Labor include among their affiliated organizations numerous local and national labor unions which have been designated and selected as collective bargaining representatives by a majority of employees of each of many employers in appropriate collective bargaining units in the State of Nebraska, and a large number of such local and national unions presently are parties to, or desire or are about to become parties to, various types of union-shop or union-security contracts with various employers throughout the State of Nebraska.

4. Such national and international labor organizations and their local union affiliates, affiliated with plaintiff American Federation of Labor and plaintiff Nebraska State Federation of Labor, have had for many years in the past, and have at the present time, large numbers of union-shop or union-security agreements with various employers in a large number of trades and industries throughout the United States and throughout the State of Nebraska. The use of union-shop or union-security agreements by such labor organizations is extremely widespread throughout the United States, as more specifically seen in an official publication of the United States Department of Labor known as Bulletin No. 829, entitled "Extent of Collective Bargaining and Union Status, January 1945," attached hereto as Exhibit "A" and made a part hereof as if specifically set forth at this point. Labor Organizations affiliated with plaintiff Nebraska State Federation of Labor, including plaintiff Lincoln Federal Labor Union No. 19129, have hundreds of union-security agreements embracing many thousands of employees engaged in various trades and industries throughout the State of Nebraska. Such agreements are with employers engaged in non-agricultural industries, trades and services. Some of these agreements [fol. 9] are with employers engaged in interstate commerce, and some are with employers engaged in intrastate commerce. Such labor organizations, as well as all other labor organizations which are a part of the American trade union movement, have traditionally entered into such union-shop agreements for purposes of security and protection and as

a means of achieving equality of bargaining power, and the union-shop status is a traditional subject matter of collective bargaining in Nebraska and throughout the United States and has been since the first days of the American trade union movement.

5. Plaintiffs American Federation of Labor and Nebraska State Federation of Labor bring this action on behalf of themselves and their affiliated labor organizations operating within the State of Nebraska, such labor organizations being too numerous to bring in as parties, the interest of such labor organizations, however, being similar; all as set forth at more leng-h in paragraph 26 hereof.

6. At all times herein mentioned, the plaintiff Lincoln Federal Labor Union #19129 was and now is a voluntary, unincorporated association of employees employed in the iron and metal trade in and around Lincoln, Nebraska, and constitutes a local labor union. It is affiliated with the plaintiffs American Federation of Labor and Nebraska State Federation of Labor, as aforesaid. Its principal office is in the City of Lincoln, State of Nebraska. Its president is Henry Reichel of Lincoln, Nebraska.

7. At all times herein mentioned, the plaintiff Henry Reichel was and now is a citizen of the United States and a resident of the City of Lincoln, State of Nebraska; an employee of the defendant Northwestern Iron and Metal Company and included within the union-shop provisions of the contract referred to in paragraph 17 hereof; a member and [fol. 10] president of plaintiff Lincoln Federal Labor Union #19129; and an affiliated member of plaintiffs American Federation of Labor and Nebraska State Federation of Labor.

8. At all times herein mentioned the defendant Northwestern Iron and Metal Company was and is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, engaging in the business of buying, selling, processing and otherwise dealing in iron and other metals and various products consisting in whole, or in part, of iron and other metals. At all of said times it has been and now is engaged in inter-state commerce, selling and shipping a substantial portion of its products to states other than Nebraska; procuring a substantial portion of its raw materials and other products used in its business from

states other than Nebraska; transporting said raw materials and other products from other states into Nebraska; delivering its finished products from Nebraska into other states by trucks, railways and other means of transportation; negotiating and completing the purchase of substantial amounts of raw materials and the sale of substantial amounts of its finished products in other states; engaging in said buying, selling, processing and dealing in iron and other metals and products for the direct and specific purpose of engaging in, and actually, substantially and directly engaging in and carrying on, business and commerce among the several states, and being subject to and operating under the National Labor Relations Act. In all of the aforesaid, and in all matters herein involved, the plaintiff Lincoln Federal Labor Union #19129, and all of the employees of defendant Northwestern Iron and Metal Company, were and are directly involved in and substantially engaged in said operations among the several states, being employees engaged and employed in interstate commerce.

9. The defendant Dan Giebelhouse is a resident of Lancaster County, Nebraska, and a former member of plaintiff [fol. 11] Lincoln Federal Labor Union #19129, as hereinafter more specifically alleged.

10. All plaintiff labor organizations herein named are organizations and associations of employees, including working men and women, in various trades, occupations and industries, who have from time to time assembled and associated together and are assembling and associating together for the purpose of organizing themselves into voluntary and unincorporated associations, for the purpose of forming, joining and assisting their organizations so formed, including the plaintiff labor organizations herein named, to bargain collectively through representatives of their own choosing, for purposes of mutual discussion and common consultation, and for dissemination of ideas and information to the membership and the general public, and to engage in concerted activities for the purpose of collective bargaining and otherwise dealing with their employers concerning hours of employment, rates of pay, working conditions or grievances of any kind relating to employment, and, in particular, the securing and obtaining of union-shop agreements providing for and insuring union

security and protection, all for their mutual aid and protection, and for the purpose, by these and other means, of protecting themselves and improving their working conditions, wages and employment relationships. All plaintiff labor associations are of the type commonly regarded and denominated as labor unions.

11. In the effectuation of their purposes, it is the necessary objective and practice of labor organizations, including the plaintiff labor associations and their affiliates, to negotiate and bargain with persons employing members of such organizations with respect to wages, hours and working conditions of the members of said unions and pertaining to other matters affecting or threatening the economic standards and the mutual welfare of the members of [fol. 12] said unions, and to arrive at mutual agreements embodied in collective bargaining contracts with said employers. The most important of such agreements are those containing union-shop or union-security provisions whereunder employees of such employers are required to become or remain members of a labor organization as a condition of employment. The obtaining of such provisions in collective bargaining agreements between labor organizations and employers now constitutes, and for over one hundred years has constituted, an ultimate objective of the association of working people, including the individual plaintiff herein, into labor organizations and of such organizations themselves, including the plaintiff labor organizations. The securing of such agreements is a necessary and indispensable concomitant of the assemblage of working people, including the members of plaintiff associations and the individual plaintiff herein, into labor organizations, and the right of labor associations, including plaintiff associations, to maintain and obtain such agreements, constitutes a necessary and indispensable element of their proper functioning and for the fulfillment of their purposes, as heretofore set forth.

12. Such union-shop or union-security agreements, including the collective bargaining agreement referred to in paragraph 17 hereof, and the right to enter into them constitute valuable property and civil rights in plaintiffs, for the following additional reasons: The union-shop or union-security agreement constitutes the most effective means of

obtaining and securing for plaintiff labor organizations and their members, including the individual plaintiff:

(1) Job security and protection from employer discrimination by removal of motives to discharge or demote because of union activity.

[fol. 13] (2) Equality of bargaining power, with consequent betterment of working conditions by insuring labor a united front in their endeavor for a fair share of the joint products of capital and labor.

(3) Protection of working standards by preventing cut-throat wage competition by non-union employees.

(4) Equality of sacrifice by insuring that all who enjoy union wages and working conditions, achieved through years of struggle and deprivation, share in the costs of such benefits as members of the union rather than as "free riders."

(5) An increased measure of union responsibility for their obligations under collective bargaining agreements by providing a means of imposing disciplinary action.

(6) Elimination of jurisdictional strife by safeguarding against raids and other disruptive tactics of rival labor organizations, and

(7) Labor-management cooperation by eliminating the suspicion and hostility which often characterizes the initial stages of employer recognition, thereby freeing union energies and resources for constructive cooperation rather than defensive sparring.

13. No labor organizations in the State of Nebraska, including the plaintiff labor organizations herein, exercise or have any monopoly or control by reason of any union-shop, closed-shop or union-security agreement over the supply of labor in any trade, craft, occupation or calling, either in the State of Nebraska generally or any city, community or place within such State.

14. Membership in the plaintiff labor organizations, as well as all other labor organizations operating in the State of Nebraska, is open to all qualified persons, and such organizations freely admit qualified applicants into member-

ship and impose no arbitrary or unreasonable requirements as a condition to membership or the continuation thereof. All of such labor organizations welcome and admit to their ranks all persons in the respective lines of work who can meet the requirements as to skill prescribed by such organizations and who will submit to the reasonable discipline [fol. 14] and by-laws of such unions and who are of good character and will agree to fulfill the contracts entered into by said unions.

15. All of the foregoing activities enumerated in the preceding paragraphs of this petition, and in particular the obtaining and maintaining of agreements containing union-shop or union-security provisions, as carried on by labor organizations and their members and by the plaintiffs in the present action and individuals represented by such plaintiffs, constitute the only effective means possessed by organized labor to accomplish economic security and otherwise deter the practices of employers which are destructive of public policy and of the interest of wage earners generally and of members of labor organizations and of plaintiff labor organizations herein, including the individual plaintiff, and said activities are indispensable concomitants of the right of employees to organize into labor organizations and to bargain collectively with employers and otherwise to advance their mutual interests and welfare.

16. Many employers in this state desire to maintain and obtain collective bargaining agreements with labor organizations containing provisions requiring membership in a labor organization as a condition of employment or other provisions relating to union security in that such provisions in collective bargaining agreements with labor organizations have resulted and result in stability of employment relationships, the promotion of harmony and cooperation as between employer and employees, the elimination of strife and discord both within the plant and as between rival labor organizations, the availability of sufficient skilled, competent and experienced artisans of the particular crafts, the stabilization of employees' compensation by the predetermination of applicable wage rates and the establishment of an effective means of increasing production. Many union shop agreements have existed in this state for a number of years, some [fol. 15] in continuous existence for more than fifty years.

All of these are by mutual agreement of the employers and employees and have been marked in their performance by harmony and the absence of industrial strife. There are numerous instances in Nebraska where an employer and all of his employees desire to retain a union shop or other form of union security agreement. The plaintiffs American Federation of Labor and Nebraska Federation of Labor are involved in a number of such situations, both with respect to employers engaged in interstate commerce and employers engaged in intrastate commerce.

17. On or about July 26, 1946, as the result of collective bargaining under the National Labor Relations Act, the defendant Northwestern Iron and Metal Company, a corporation, and the plaintiff Lincoln Federal Labor Union No. 19129, as a voluntary association subordinate to and chartered by the plaintiff American Federation of Labor, mutually and voluntarily made, executed and entered into a certain written collective bargaining contract, in consideration of the mutual promises, agreements, acts and benefits therein contained, a copy of said collective bargaining contract being attached hereto as Exhibit "B" and made a part hereof as if specifically set forth at this point. Said contract is in effect until July 26, 1947, and thereafter automatically renewable from year to year. In paragraph 3 thereof it is provided:

> "Whenever any employee shall cease to be a member in good standing with the Union and when the Union shall have given written notice to the Company to that effect, the Company agrees to discharge said employee from its service at the end of the work week in which said notice of failure to maintain good standing in the Union is received."

18. The defendant Dan Giebelhouse was a member of the plaintiff Lincoln Federal Labor Union No. 19129 at the time of the making of said contract. He has been an employee of defendant Northwestern Iron and Metal Company at that [fol. 16] time and all times since, including the present time, employed as the operator of a lift-truck and loader and unloader, in the unit covered by said collective bargaining contract. On November 1, 1946, the defendant Dan Giebelhouse became delinquent in the payment of his dues to

plaintiff Lincoln Federal Labor Union No. 19129; has paid no dues since then and was suspended and ceased to be a member in good standing with said Union on February 1, 1947, and has not been a member in good standing with said Union at any time thereafter.

19. At no time has the employment of defendant Dan Giebelhouse been as a member of the office force, executive, foreman, employee having the right to hire or discharge, salesman or junk dealer buying or selling for the said Company outside of its plant or otherwise.

20. On February 10, 1947, the said plaintiff Lincoln Federal Labor Union No. 19129 gave written notice to the defendant Northwestern Iron and Metal Company, a corporation, that the said Dan Giebelhouse had ceased to be a member in good standing with said Lincoln Federal Labor Union No. 19129 and that he had been delinquent in his dues to said Union for the period of more than three months last past and stood suspended as a member of said Union; and said written notice further specifically asked that said Northwestern Iron and Metal Company discharge said employee from the service of said Company at the end of the work week in which said notice was received. The said work week ended at the close of February 14, 1947.

21. Upon receipt of said written notice on February 10, 1947, the defendant Northwestern Iron and Metal Company notified the plaintiff Lincoln Federal Labor Union No. 19129 that it refused to discharge the said Dan Giebelhouse and that it would not discharge said employee or any other employee under the provisions of its said written contract; [fol. 17] that it repudiated said section 3 of its contract and refused to perform it at any time and that the said section was null and void. Said defendant stated and continues to maintain that said section 3 is illegal and void under the provisions of the so-called "Nebraska 'Anti-Closed-Shop Amendment" to the Nebraska Constitution adopted November 5, 1946, and that it is unlawful for the parties to said contract to carry out the provisions of said section 3 or for the defendant Dan Giebelhouse to be discharged or for said provisions of the contract to be renewed.

22. In spite of the position of the plaintiff Lincoln Federal Labor Union No. 19129 that the said amendment is wholly

unconstitutional and void and that the said contract be respected and fulfilled and that the said Dan Giebelhouse be discharged, the said defendant Northwestern Iron and Metal Company has refused and still refuses to discharge him and continues to repudiate section 3 of said contract and to refuse to perform it. Said defendant continues to maintain said Dan Giebelhouse in its employ and threatens to continue to do so and to continue its violation of said contract, as hereinbefore alleged, all of which will cause irreparable damage to the plaintiffs.

23. The said Lincoln Federal Labor Union No. 19129 has performed all conditions of the said contract called for on its part, but the defendant Northwestern Iron and Metal Company has refused and continues to refuse to perform said contract, as aforesaid.

24. At the time said contract was entered into the plaintiff Lincoln Federal Labor Union No. 19129 was the representative of each and every employee embraced under said contract and the duly designated and selected and recognized bona fide exclusive bargaining representative chosen by all of said employees; and all of this applies at the [fol. 18] present time except as to said defendant Dan Giebelhouse. The unit embraced under the said collective bargaining agreement is and at all times has been appropriate for the purposes of collective bargaining. Prior to the time said agreement was entered into, the employees covered by such agreement were given an opportunity, through a meeting, to determine whether they desired to be included under a union-security agreement and the vote was unanimous for such inclusion and for the execution of this particular contract. All of the employees, with the exception of defendant Dan Giebelhouse, are desirous of maintaining and continuing said agreement with respect to union security.

25. The said contract and, in particular, the union-shop provisions thereof, constitute valuable property rights of the plaintiffs and the members of the plaintiff associations. Under and by virtue of such agreements and the union-security provisions thereof, the plaintiffs, employers and the general public have realized and are realizing many benefits and advantages, including those enumerated in paragraphs 10 through 16, supra.

26. The members of the plaintiff labor organizations, including plaintiff Henry Reichel, and the officers, agents and employees of said organizations and the individual members of such organizations and of all other organizations of employees and all other labor organizations affiliated with plaintiffs American Federation of Labor and Nebraska State Federation of Labor having members who are residents of the State of Nebraska and being organized for the purpose of dealing with employers concerning hours of employment, rates of pay and working conditions, constitute a class situated similarly to the plaintiff labor organizations and the individual plaintiff with respect to the matters herein alleged and are so numerous as to make it impossible or impractical to bring them all before this Court, but the rights and interests of all of such class with respect [fol. 19] to the things and matters in this petition alleged are fairly represented by the plaintiffs herein, and these plaintiffs have heretofore been authorized to represent the members of said class with respect to the matters in this petition alleged and to bring this suit for and on behalf of themselves and all such other organizations affiliated with the American Federation of Labor or with the Nebraska State Federation of Labor, and organizations, persons and individuals similarly situated. Plaintiff labor organizations and plaintiff Henry Reichel bring this suit on behalf of themselves and as representative of the interests and rights of the class hereinbefore described in this paragraph.

27. The State of Nebraska is made a party to this suit under the provisions of the Nebraska Declaratory Judgments Law because of the fact that this suit involves the question of constitutionality of said amendment to the Constitution of the State of Nebraska.

28. The refusal or failure of employers, including defendant Northwestern Iron and Metal Company, to perform provisions of their contracts relating to union security in collective bargaining agreements will cause immediate and irreparable injury and damage to plaintiff labor organizations who are parties to such agreements, including the individual plaintiff and other members of such organizations, in that the benefits and advantages under such agreements will be lost and disruption to production will inevit-

ably result if there is any failure to continue to observe the union-security provisions of such agreements.

29. Other employers, besides Northwestern Iron and Metal Company, with whom the plaintiffs American Federation of Labor and Nebraska Federation of Labor have collective bargaining agreements containing union-security provisions have also taken the position that the said "Anti-[fol. 20] Closed-Shop Amendment" is applicable and effective, and there is threatened throughout the State of Nebraska a breakdown in the processes of collective bargaining, multiplicity of litigation, unsettling of amicable relationships between employers and employees, industrial strife and disruption of interstate and intrastate commerce, all to the irreparable injury of the plaintiffs, other labor organizations and individuals similarly situated and employers and the general public.

30. Cancellation or repudiation of existing contracts or refusal to renew or enter into such contracts by employers, including defendant Northwestern Iron and Metal Company, because of the said "Anti-Closed-Shop Amendment" will deprive the plaintiffs and others similarly situated of the benefits, advantages and privileges of mutual association and assembly and of the mutual obligations heretofore assumed by members of such organizations in such mutual association and assembly. It will deprive the plaintiffs and all members of the plaintiff labor organizations of the benefits, rights, privileges and immunities heretofore received and now possessed under contracts made by plaintiff labor organizations and by and among the members thereof, and will prevent such plaintiffs and all members of the plaintiff labor organizations from engaging in all of the activities hereinbefore set forth and from securing the benefits, objectives and purposes of their mutual association and assembly as hereinabove set forth, and will irreparably injure and eventually destroy the plaintiff labor organizations. It will interfere with and prevent and cause a cessation and denial of collective bargaining relations by the plaintiff labor organizations and all others in the State of Nebraska similarly situated, and interfere with and prevent the renewal and continuance of contracts and agreements now in effect between the plaintiff labor organizations and employers, including contracts which by their terms provide

[fol. 21] for automatic renewal. It will cause plaintiff labor organizations and others similarly situated to lose present and prospective members and to lose considerable finances because of an inevitable decrease in amount of dues collected, will imperil the security of such labor organizations and their members, and will prevent plaintiffs and others similarly situated from enjoying the benefits of the National Labor Relations Act and from achieving an equality of bargaining power. Such acts will imperil and destroy the process of collective bargaining in the State of Nebraska and will inevitably interfere with and disrupt both interstate and intrastate commerce in wide areas of the State. Such acts will imperil and disrupt harmonious relationships existing between plaintiffs and others similarly situated and employers, all to the irreparable injury of plaintiff labor organizations, their members, including plaintiff Henry Reichel, and others similarly situated and of employers and the general public.

31. That by reason of all the foregoing, there has arisen a grave question and an actual controversy concerning the rights, status and legal relations of the parties to the collective bargaining agreement hereinbefore set forth and other similar agreements, and as to the right of plaintiffs and others similarly situated to enter into or renew agreements containing union-security provisions, including said agreement attached hereto as Exhibit "B"; that the rights, status, duties and obligations of the parties to all such agreements have been made uncertain and insecure by reason of the said Anti-Closed-Shop Amendment and the facts herein alleged; that it is necessary to obtain an adjudication from this Court setting forth the rights, status, duties and obligations of such parties with respect to such agreements and with respect to renewals thereof and future agreements in order to avoid widespread confusion, disruption and interference with constitutional rights, particularly with respect [fol. 22] to the rights, status and legal relations of the parties growing out of the collective bargaining agreement attached to this petition as Exhibit "B"; that there exists an actual and immediate controversy between the parties to the said agreement as to the validity of the said contract and as to the meaning, construction, application, operation, legality and constitutionality of the said Anti-Closed-Shop

Amendment; that the plaintiffs have no adequate remedy other than as prayed for in the suit at bar.

III

The Anti-Closed-Shop Amendment

32. On November 5, 1946, there was submitted to the voters of Nebraska, by initiative petition, the following proposed amendment to the Constitution of the State of Nebraska:

"A Measure

For an Amendment to the Constitution of the State of Nebraska prohibiting the denial of employment to any person because of membership or non-membership in a labor organization and prohibiting any contract requiring denial of employment because of membership or non-membership in a labor organization; defining "labor organization" and providing that said proposed amendment be self-executing.

"Be it Enacted by the People of the State of Nebraska:

That the Constitution of Nebraska be amended by the addition of the following article:

"Section 1.

No person shall be denied employment because of membership in or affiliation with, or resignation or expulsion from a labor organization or because of refusal to join or affiliate with a labor organization; nor shall any individual or corporation or association of any kind enter into any contract, written or oral, to exclude persons from employment because of membership in or non-membership in a labor organization.

"Section 2.

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, which exists for the purpose, [fol. 23] in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"Section 3.

This article is self-executing and shall supersede all provisions in conflict therewith; legislation may be enacted to facilitate its operation but no law shall limit or restrict the provisions hereof."

33. The said proposed amendment was adopted by vote of the people of the State of Nebraska, voting at said general election on November 5, 1946. On December 12, 1946, the Governor of the State of Nebraska, issued an official proclamation setting forth that the proposed amendment had received a majority of the votes cast on the question of its adoption and that the affirmative votes were not less than thirty-five percent of the total votes cast at the election. Said proposed amendment, under the laws of the State of Nebraska, immediately became effective and operative, upon the issuance of such proclamation, as a law of the State of Nebraska, and as an amendment to the Constitution of the State of Nebraska. Such law is commonly known as the "Anti-Closed-Shop Amendment" as aforesaid.

34. The said law is intended and purports to make unlawful the continuation in effect or the entering into of any provision of any collective bargaining agreement between any labor organization and any employer in the State of Nebraska, whereunder union membership is required as a condition of employment.

IV

Manner in Which Said Law Violates the Federal Constitution and Deprives Plaintiffs of Rights Guaranteed Thereunder and Reasons Why Inoperative

35. Plaintiffs herein and others similarly situated believe and assert that the said purported law hereinbefore referred to and known as the "Anti-Closed-Shop Amendment" is void, unenforceable, unconstitutional and of no legal effect [fol. 24] whatsoever for the following reasons, to wit:

(1) Said purported law prevents individuals and members of labor organizations, including the individual plaintiff and other individual members of the plaintiff labor organizations herein, from accomplishing the ultimate purpose and objective of such individuals

in assembling and associating together into labor organizations and in exercising the rights of speech, press and petition while so assembled, or as a part of such assemblage, and thereby denies, impairs and previously restrains the exercise by such individuals and organizations of their rights of assembly, speech, press, and petition guaranteed under the First Amendment to the United States Constitution as protected against invasion by the State by the Fourteenth Amendment. Enforcement of the said law will deprive the plaintiffs of the benefits and privileges of mutual association and assembly and of the mutual obligations heretofore assumed by members of the plaintiff organizations in such mutual association and assembly as guaranteed by such First Amendment, and would impair and restrain the exercise of the rights alleged in this petition all in violation of the said First Amendment.

(2) Said purported law impairs and invalidates any provision in any collective bargaining agreement between any employer and any labor organization which provides that membership in such labor organization shall be a condition of employment and, in particular, invalidates and impairs the obligations of the existing contracts entered into by the plaintiffs prior to the time such amendment became effective, as hereinbefore specifically set forth, and further, said alleged law makes inoperative, ineffective and invalid, and otherwise impairs the obligations and agreements mutually and voluntarily assumed by and among members of labor organizations, including plaintiff labor organizations and their members, all in violation of Article I, Section 10, of the Constitution of the United States providing that no State shall make laws impairing the obligations of contracts.

(3) Said purported law prevents labor organizations and their members, including plaintiff labor organizations and their members and the individual plaintiff herein, from discussing, negotiating, bargaining for, and entering into or renewing mutually agreeable collective bargaining agreements containing union shop or union security provisions with employers engaged

in either interstate or intrastate commerce, including the parties to this case, and from using such union-shop or union-security agreement as a means of achieving security, protection and an equality of bargaining power, and prevents such employers from discussing, negotiating, bargaining for, renewing or entering into [fol. 25] mutually agreeable bargaining agreements, and thereby such law has withdrawn a very important and traditional subject matter of collective bargaining from the subject matters concerning which employers are under a duty to bargain under the National Labor Relations Act. Such law has and will in the future precipitate labor disputes and disturbances which have and will interrupt the free flow of, and otherwise affect, commerce among the States, all in conflict with the provision of the National Labor Relations Act, Title 29, Sections 151 to 166, U. S. Code Annotated, and violative of the public policy and law of the United States with respect to employers or employees engaged in interstate commerce or engaged in occupations affecting interstate commerce as laid down in Section 151 of said Code. Such law is in conflict with and violates and seeks to abrogate rights and privileges conferred on employees, members of labor organizations, and labor organizations, including the individual plaintiff and the plaintiff labor organizations and their members, by Sections 157, 158 and 159 of said Code aforesaid, and it is in conflict with, violates and seeks to abrogate duties and obligations imposed upon employers under such National Labor Relations Act, particularly Section 158 thereof, all in violation of Article VI of the United States Constitution providing that the laws of the United States shall be the supreme law of the land.

(4) The said purported law prevents labor organizations and employers, including the parties to this case, from negotiating, entering into, carrying out and renewing mutually agreeable collective bargaining agreements containing union-shop or union-security provisions, or requiring employees to become and remain members of labor organizations as a condition of employment, and thereby deprives such labor organizations and their members, including the plaintiffs, and

employers, of property rights and liberties secured, protected and guaranteed against infringement by the States under the Fourteenth Amendment to the United States Constitution, and in particular of the right and liberty freely to contract, protected as a property right under the due process clause of the Fourteenth Amendment to the United States Constitution. The said alleged law denying plaintiffs their liberties and civil and property rights, as heretofore set forth, is arbitrary and unreasonable and constitutes an improper and unlawful exercise by the State of Nebraska of its police power. Said law is without rational basis, is not justified by existing circumstances, and is not in the public interest. It imposes hardships in disproportion to any possible public benefit, and the interests of the public generally are not such as to require or justify the enactment of said law. For the foregoing reasons the said law is in violation of the Fourteenth Amendment to the United States Constitution.

[fol. 26] (5) The said purported law, be prohibiting agreements between labor organizations and employers which contain union-shop or union-security provisions, discriminates against the class of members of labor organizations, and in particular against plaintiff labor organizations and their members and the individual plaintiff herein, on the one hand, and in favor of non-members of labor organizations on the other. Such alleged law constitutes class legislation passed in the interest of the class of non-union employees and not in the interest of the public generally. The said law is further discriminatory in that it prohibits labor organizations alone out of all other classes of organizations, societies or voluntary associations established for the purpose of bringing cultural, social, economic or spiritual benefits to their members, from attempting by voluntary arrangement to require all who obtain the benefits of union activity to contribute to the support and maintenance of that union, and this in spite of the fact that such unions are required, under federal law with respect to interstate industries, to distribute benefits achieved through the process of collective bargaining equally to all employees within the bargaining

unit and to represent all within such unit on the same basis regardless of whether such employees are or are not union members. Accordingly, such purported law is in violation of the provisions of the Fourteenth Amendment to the United States Constitution requiring that no State shall deny any person within its jurisdiction the equal protection of the laws.

V

Prayer

Wherefore plaintiffs pray:

1. That the Court determine and declare the said collective bargaining agreement, Exhibit "B", to be valid and enforceable in all respects.

2. That the Court determine and declare the said Anti-Closed-Shop Amendment to be unconstitutional and void under the Constitution of the United States.

3. That the Court determine and declare the rights, status and other legal relations of the plaintiffs and defendants with respect to the said contract, including the renewal thereof, and with respect to the said purported amendment and all other matters set forth in this petition.

4. That the Court order the defendant Northwestern Iron [fol. 27] and Metal Company to forthwith specifically perform the said contract in all of its provisions and to discharge the defendant Dan Giebelhouse from its employ.

5. That the Court enjoin the defendant Northwestern Iron and Metal Company from continuing the defendant Dan Giebelhouse in its employ.

6. That the costs of this suit be taxed against the defendants.

7. That such other, further and different relief be granted to the plaintiffs as may be just and equitable.

Joseph A. Padway, Herbert S. Thatcher, Bernard S. Gradwohl, Attorneys for Plaintiffs.

Duly sworn to by John J. Guenther. Jurat omitted in printing.

[fol. 28] PRAECIPE

To the Clerk of the District Court for Lancaster County, Nebraska:

Please issue summons in this suit and deliver the same to the Sheriff of Lancaster County, Nebraska, for service upon the defendants in the manner provided by law.

Joseph A. Padway, Herbert S. Thatcher, Bernard S. Gradwohl, Attorneys for Plaintiffs.

[fol. 29] EXHIBIT "A" TO PETITION

United States Department of Labor

Frances Perkins, Secretary

Bureau of Labor Statistics

Isador Lubin, Commissioner (on leave)

A. F. Hinrichs, Acting Commissioner

Extent of Collective Bargaining and Union Status

January 1945

Bulletin No. 829

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., Price 5 cents.

[fol. 29a] Letter of Transmittal

United States Department of Labor,
Bureau of Labor Statistics,
Washington, D. C., April 9, 1945.

The Secretary of Labor:

I have the honor to transmit herewith a report on the extent of collective bargaining and union status in effect in January 1945. This study is based on an analysis of approximately 15,000 employer-union agreements as well as employment, union membership, and other data available to the Bureau of Labor Statistics.

This study was prepared under the general supervision of Florence Peterson, Chief of the Industrial Relations Division. Elizabeth Stark and Philomena Marquardt were in immediate charge of assembling the data.

A. F. Hinrichs, Acting Commissioner.

Hon. Frances Perkins, Secretary of Labor.

Contents

[fol. 29b] Bulletin No. 829 of the United States Bureau of Labor Statistics

[Reprinted from the Monthly Labor Review, April 1945, with Additional Data]

Extent of Collective Bargaining and Union Status, January 1945[1]

Union Agreement Coverage

Some 14⅓ million workers were employed under collective-bargaining contracts in January 1945. An analysis by the Bureau of Labor Statistics indicates that these workers included approximately 47 percent of all workers employed in industries and occupations in which unions are actively engaged in obtaining written agreements with employers.[2] During the year 1944 there was an increase in

[1] For similar data for previous years see Monthly Labor Review, April 1944, February 1943, May 1942, and March 1939.

[2] It is estimated that approximately 30¼ million workers were employed in occupations in which unions are actively engaged in organizing and seeking to obtain written agreements. In most industries this includes all wage and salary workers except those in executive, managerial, and certain types of professional positions. It excludes all self-employed, domestic workers, agricultural wage workers on

agreement coverage of over half a million workers, which was equivalent to a 4.5-percent rise in the proportion of employed workers covered by agreements.

Manufacturing.—Approximately 65 percent (more than 8¾ million) of all production wage earners [3] in manufacturing industries were employed under the terms of union agreements at the beginning of 1945, representing an increase during the year of 8 percent in the proportion of employees working under union agreements.

The largest increases in the proportion of workers under agreement were in the tobacco and chemical industries and, to a less extent, in the canned and preserved foods industry. Agreements were negotiated for the first time with several large aircraft and petroleum-refining companies, as well as with a number of meat-packing, shoe, leather-tanning, and rubber companies.

The degree of union organization at the beginning of 1945 varied considerably among the manufacturing industries, although not so much as among nonmanufacturing industries and trades. Over 90 percent of the production wage earners were working under union agreements in the aluminum, automobile, basic steel, brewery, fur, glass, men's clothing, rubber, and shipbuilding industries, in contrast to only a little more than 10 percent in the dairy-products industry.

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farms employing fewer than 6 persons, all Federal and State government employees, teachers, and elected and appointed officials in local governments.

It should be noted that the number of workers covered by union agreements is not the same as union membership. Except under closed- or union-shop conditions, agreements cover nonmembers as well as members employed within the given bargaining unit. On the other hand, some union members may be working in unorganized plants and many civil-service employees and teachers are members of unions but are not employed under the terms of bilateral written agreements.

[3] Clerical, professional, service, and construction workers, foremen, and truck drivers connected with manufacturing are treated as occupational groups under nonmanufacturing employees.

[fol. 29c]

Proportion of Wage Earners Under Union Agreements in January 194[illegible]

MANUFACTURING INDUSTRIES

80–100 percent	60–80 percent	40–60 percent	20–40 percent	1–20 percent
Agricultural equipment.	Book and job printing and publishing.	Baking.	Beverages, nonalcoholic.	Dairy products.
Aircraft and parts.	Clocks and watches.	Canning and preserving foods.	Chemicals, excluding rayon yarn.	
Aluminum.	Coal products.	Dyeing and finishing textiles.	Confectionery products.	
Automobiles and parts.	Electrical machinery, equipment, and appliances.	Flour and other grain products.	Cotton textiles.	
Breweries.	Leather tanning.	Furniture.	Paper products.	
Carpets and rugs, wool.	Machinery and machine tools.	Gloves, leather and cloth.	Silk and rayon textiles.	
Cement.	Millinery and hats.	Hosiery.		
Clothing, men's.	Paper and pulp.	Jewelry and silverware.		
Clothing, women's.	Petroleum refining.	Knit goods.		
Furs and fur garments.	Railroad equipment.	Leather luggage, handbags, novelties.		
Glass and glassware.	Rayon yarn.	Lumber.		
Meat packing.	Tobacco products.	Pottery, including chinaware.		
Newspaper printing and publishing.	Woolen and worsted textiles.	Shoes, cut stock and findings.		
Nonferrous metals and products.		Steel products.		
Rubber products.		Stone and clay products.		
Shipbuilding.				
Steel, basic.				
Sugar, beet and cane.				

NONMANUFACTURING INDUSTRIES

Actors and musicians.	Radio technicians.	Bus lines, intercity.	Barber shops.	Agriculture.[1]
Airline pilots and mechanics.	Theater—stage hands, motion-picture operators.	Light and power.	Building servicing and maintenance.	Beauty shops.
Bus and street car, local.		Newspaper offices.	Cleaning and dyeing.	Clerical and professional, excluding transportation, communication, theaters, and newspapers.
Coal mining.		Telephone service and maintenance.	Crude petroleum and natural gas.	Retail and wholesale trade.
Construction.			Fishing.	
Longshoring.			Hotels and restaurants.	
Maritime.			Laundries.	
Metal mining.			Nonmetallic mining and quarrying.	
Motion-picture production.			Taxicabs.	
Railroads—freight and passenger, shops and clerical.				
Telegraph service and maintenance.				
Trucking, local and intercity.				

[1] Less than 1 percent.

[fol. 29d] *Nonmanufacturing.*—About 33 percent (slightly more than 5½ million) of all nonmanufacturing workers were employed under the terms of union agreements at the beginning of 1945, representing an increase during the year of 6 percent in the proportion of employees working under agreement.

Over 95 percent of the coal-mining, maritime and longshoring, and railroad employees, including clerical and supervisory personnel, and over 90 percent of the employees in the iron-mining and telegraph industries were employed under union agreements.

Nearly 25 percent of the employees in service occupations and slightly less than 20 percent of the clerical and professional employees were under union agreements. A major portion of the clerical and professional workers in the transportation, communications, and public utilities industries and practically all actors and musicians were employed under collective-bargaining agreements. In manufacturing, financial, and business service establishments, and in wholesale and retail trade, only about 13 percent of the clerical and professional employees were under agreement.

Union Status

General Types

The union-status provisions in employer-union agreements can be classified into five general types according to their union-membership requirements and privileges, as well as to the presence or absence of check-off arrangements. The various degrees of union recognition or union security are commonly referred to as closed shop, union shop with or without preferential hiring of union members, maintenance of membership, preferential hiring with no membership requirements, and sole bargaining with no membership requirements. Check-off arrangements are of two kinds, usually referred to as automatic check-off and check-off by individual authorization.

Under closed-shop agreements all employees are required to be members of the appropriate union at the time of hiring, and they must continue to be members in good standing throughout their period of employment. Most of the closed-shop agreements require employers to hire through the union unless the union is unable to furnish suitable persons

within a given period, in which case the persons hired elsewhere must join the union before starting to work.

In contrast to closed-shop agreements, a union-shop agreement provides that employers have complete control over the hiring of new employees and such persons need not be union members when hired. They must, however, become members within a specified time, usually 30 to 60 days, as a condition of continued employment. When a union-shop agreement, in addition to requiring that all employees join the union within a specified probationary period, states that union members shall be given preference in hiring, it differs very little in effect from the closed-shop agreement. In a few cases, employees hired before a closed- or union-shop agreement is signed are exempt from the union-membership requirement.

A maintenance-of-membership agreement requires all employees who are members when the agreement is signed, and all who choose later to join the union, to retain their membership for the duration of the agreement. The

(Here follows, 1 photolithograph, side folio 29c)

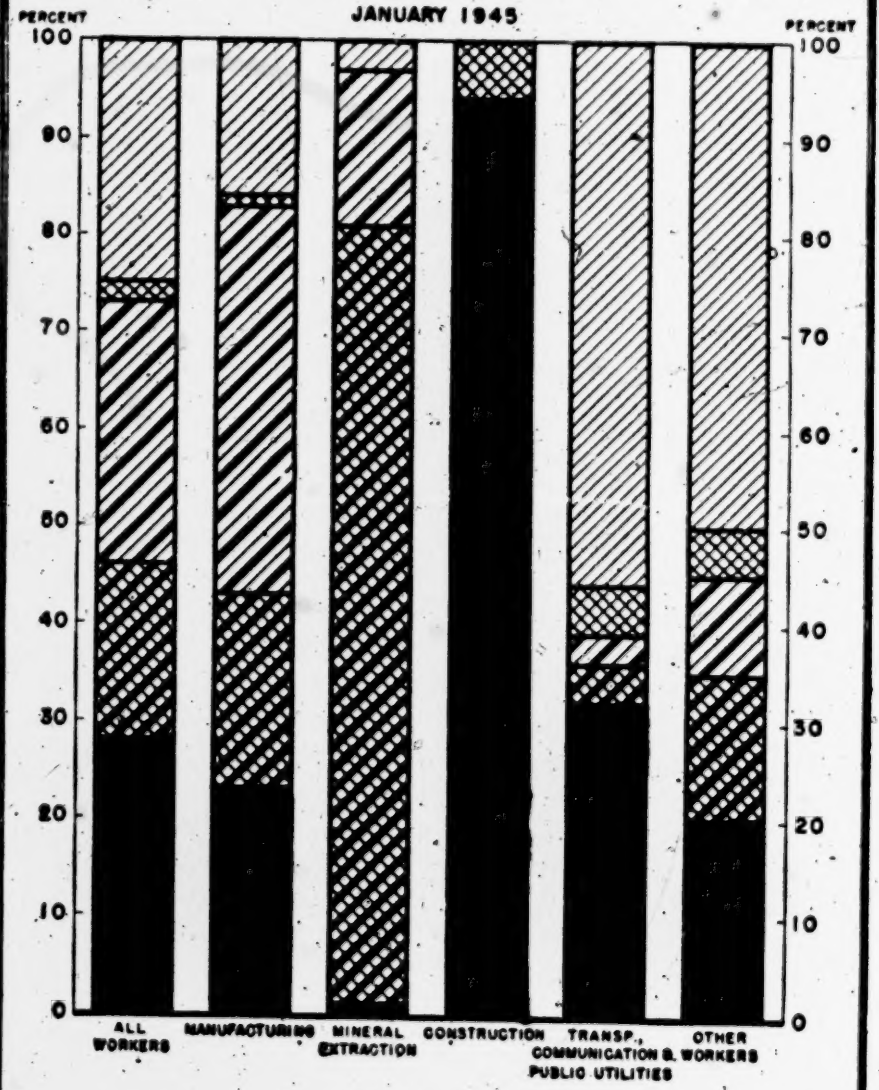
CHART 1

PROPORTION OF WORKERS UNDER UNION AGREEMENT

BY UNION STATUS PROVIDED

MAJOR INDUSTRY GROUPS

JANUARY 1945



UNITED STATES DEPARTMENT OF LABOR
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[fol. 29f] maintenance-of-membership, provisions established by order of the National War Labor Board allow 15 days during which members may withdraw if they do not wish to remain members for the duration of the agreement.

Some agreements provide for preferential hiring without union-membership requirements. In other words, union members must be hired if available, but otherwise the employer may hire nonmembers and such persons need not join the union as a condition of continued employment.

Some agreements include no membership requirements as a condition of hiring or continued employment. The union is recognized as the sole bargaining agent for all employees in the bargaining unit and is thus responsible for negotiating the working conditions, under which all workers are employed, including those who do not belong to the union. This type of agreement, unlike the others, does not enable the union to rely on employment per se to maintain or increase its membership.

Extent of various types of union-status provisions.—Although the proportion of workers under closed- and union-shop clauses remained about the same, the proportion under maintenance-of-membership clauses continued to increase during 1944. By January 1945, approximately 27 percent (3¾ million) of all persons employed under union agreements were employed under maintenance-of-membership clauses, an increase during the year of almost 23 percent in the proportion of workers under such agreements. About 28 percent (4 million) of all workers under agreement were employed under closed-shop provisions and about 18 percent (2½ million) under union-shop agreements. (About 7 percent of the latter were covered by agreements which also specified that union members should be given preference in hiring.) Only 2 percent of all workers under agreement were covered by union preferential clauses, whereas 25 percent were under agreements which provided recognition only.

The proportion of workers under agreement covered by various types of union status in January 1945 is shown by chart 1, for major industry groups. All clerical, professional, and service workers are included in the group "other workers." All trucking and warehousing workers are included in "transportation, communication, and public utilities." Except for these occupational groups, workers

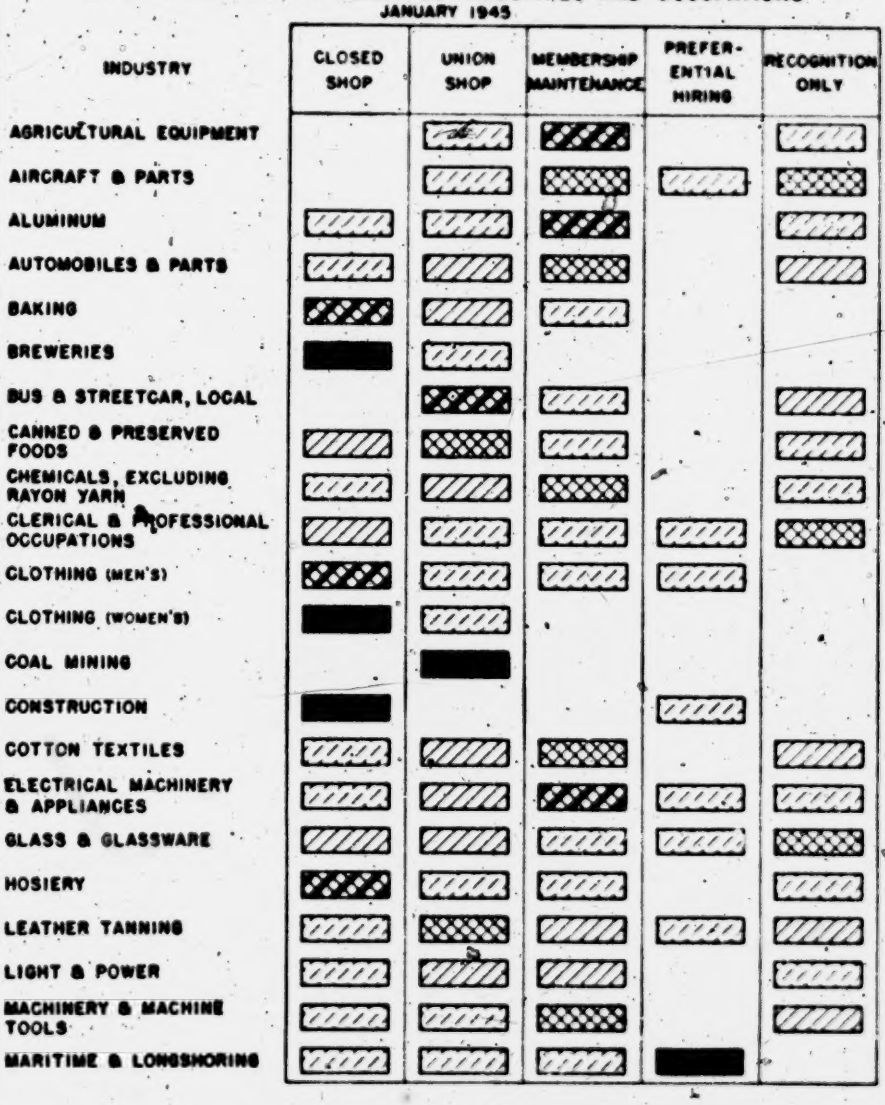
have been included in the industry in which they are employed.

Manufacturing.—In January 1945, closed-shop provisions covered approximately 23 percent of all workers under manufacturing agreements, and union-shop agreements 20 percent—or together a total of about 3¾ million workers. Of the union-shop agreements, about 10 percent also provided that union members should be given preference in hiring. Most of the wage earners under agreement in the bakery, brewery, men's and women's clothing, and printing and publishing industries were employed under closed- or union-shop clauses. Substantial proportions of those under agreement in the hosiery and canned and preserved foods industries, and a majority of those under agreement in the paper, shoe, shipbuilding, and silk and rayon industries, were working under closed- or union-shop provisions.

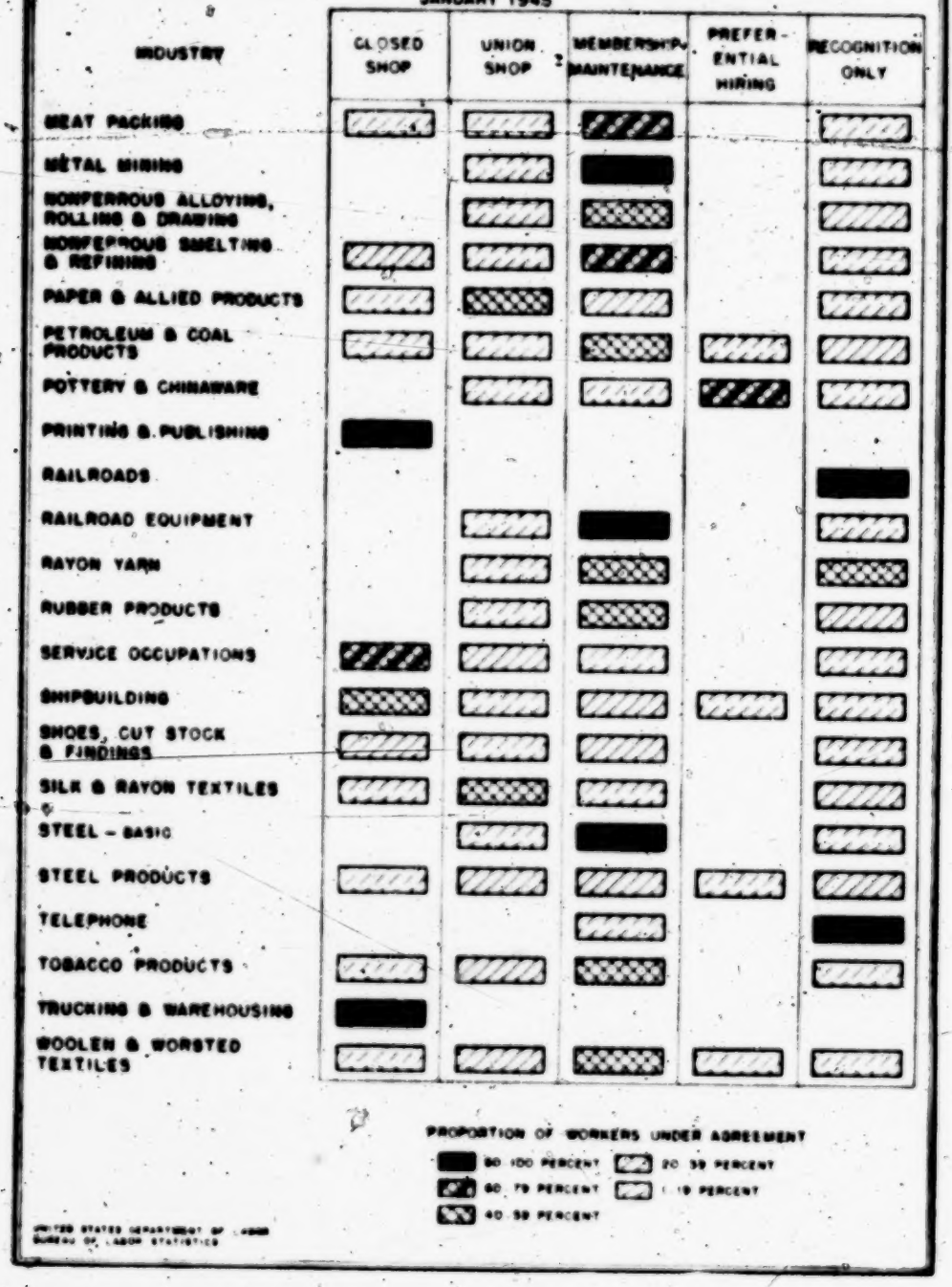
About 3½ million workers in manufacturing industries were employed at the beginning of 1945 under maintenance-of-membership clauses. They included 40 percent of all

(Here follow 2 photolithographs, side folios 29g, 29h)

PROPORTION OF WORKERS UNDER UNION AGREEMENT
BY UNION STATUS IN SELECTED INDUSTRIES AND OCCUPATIONS
JANUARY 1945



PROPORTION OF WORKERS UNDER UNION AGREEMENT
BY UNION STATUS IN SELECTED INDUSTRIES AND OCCUPATIONS
JANUARY 1945



UNITED STATES DEPARTMENT OF LABOR
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[fol. 29i] workers under manufacturing agreements, representing an increase of about 14 percent during the year in the proportion employed under such agreements. The greatest increase over the previous year in the proportion working under maintenance-of-membership clauses occurred in the non-ferrous-metals alloying, rolling and drawing industry (from less than 15 percent to over 50 percent), but there were very substantial increases in the machinery and machine-tool, nonferrous-metals smelting and refining, tobacco, woolen and worsted textile, and electrical-machinery industries. At the beginning of 1945 maintenance-of-membership clauses covered most of the employees under agreement in the basic steel industry, a substantial proportion of those in the agricultural and railroad equipment and meat-packing industries and a majority of those under agreement in the aluminum, automobile, electrical-machinery, machinery and machine-tool, rubber, tobacco, woolen and worsted textile industries and in the nonferrous-metals alloying, rolling, drawing, smelting and refining industries.

Only about 1 percent of all manufacturing workers under agreement were employed under preferential-hiring provisions with no union-membership requirements. In only one manufacturing industry, pottery, were such clauses common.

About 16 percent of the workers under agreement in all manufacturing industries were employed in plants which recognize the union as sole bargaining agent but do not require union membership as a condition of hiring or continued employment. In the rayon-yarn industry slightly more than half of those under agreement were covered by such clauses and between a third and a half of those in the cotton textile, petroleum and coal products, nonferrous-metals alloying, rolling, and drawing, aircraft, and glass industries.

Nonmanufacturing.—Approximately 36 percent of all workers under agreements in nonmanufacturing industries and occupations were covered by closed-shop provisions and about 16 percent by union-shop provisions—a total of more than 2¾ million workers. Only a few of the union-shop agreements also provided that union members should be given preference in hiring. The closed shop was provided in almost all agreements in building con-

struction and trucking and in many of the agreements covering service and trade employees such as barbers and employees in building service, laundry, dry cleaning, and food establishments. Coal miners and a majority of the organized bus and street-railway employees were under union-shop agreements.

About 6 percent of the nonmanufacturing workers under agreement were employed under membership-maintenance clauses. The greatest increase over the previous year in the proportion working under such clauses occurred in wholesale and retail trade, metal mining, and crude petroleum and natural gas; in the two last-named industries the majority of the employees were covered by such clauses.

Only 4 percent of all nonmanufacturing workers under agreement were employed under agreements with preferential-hiring provisions but no union-membership requirements. Only in maritime and longshoring are such clauses common.

About 38 percent of the workers under agreement in all nonmanufacturing industries and occupations were employed under contracts which recognized the union as sole [fol. 29j] bargaining agent but included no membership requirements. More than half of these workers were employed in the railroad industry, where virtual union-shop conditions prevail, although the agreements do not provide for union-shop arrangements.

Check-off Arrangements

During 1944 there was an increase of about 28 percent in the proportion of workers under agreements who were covered by some form of check-off provisions. Almost 6 million workers, or more than 40 percent of all employees under agreements, were covered by check-off provisions in January 1945. About half were covered by clauses providing for the automatic check-off of all members' dues and the other half by clauses which provide for check-off only for those employees who file individual written authorizations with the employer. Under some of the latter agreements the authorizations, once made, continue in effect for the duration of the agreement; under others they may be withdrawn whenever the employee desires. (If working under a closed- or union-shop or maintenance-of-membership agreement, however, the employee must personally pay his

dues to the union if he cancels his check-off.) Although most of the check-off clauses provide that all dues and assessments levied by the union shall be collected, some specify "regular dues only" or check-offs not to exceed a given amount.

Manufacturing.—Almost 4½ million workers, or more than half of all workers under agreement in manufacturing industries, were employed at the beginning of the year under agreements which provide for check-off. Slightly fewer manufacturing workers were covered by automatic check-off arrangements than by provisions for check-off upon individual authorization.

During 1944 the proportion of workers under check-off arrangements increased about 38 percent. Most of the increase in the proportion under agreement with check-off arrangements took place in shipbuilding, although there were considerable increases in the railroad-equipment and nonferrous-metals alloying, rolling, and drawing industries. Over 90 percent of the workers under agreement in the basic steel, railroad-equipment, and hosiery industries were covered by check-off provisions, and the great majority of those in the cotton-textile, meat-packing, nonferrous-metals alloying, rolling, and drawing, shipbuilding, silk and rayon textile, and woolen and worsted textile industries.

Nonmanufacturing.—About 1½ million, or 26 percent of the workers employed under agreements in nonmanufacturing industries, were covered by some form of check-off arrangement. Most of these check-off clauses, including those covering coal miners, specify that the employer is to deduct the union dues and assessments from the wages of all members. The agreements for about a third of the nonmanufacturing employees covered by check-off clauses provided for check-off only upon authorization of individual employees.

[fol. 30] EXHIBIT "B" TO PETITION

Agreement

This agreement made and entered into this 26th day of July, 1946, by and between the Northwestern Iron and Metal Company, a corporation with its principal place of business in Lincoln, Nebraska, by its officer or officers duly

authorized and empowered to bind said corporation, hereinafter referred to as the Company and the Lincoln Federal Labor Union #19129, a voluntary association, subordinate to and chartered by the American Federation of Labor, by its officers duly authorized and empowered to act for and in its behalf, hereinafter referred to as the Union.

For and in consideration of the mutual covenants contained herein the parties to this agreement hereby agree to the following provisions, to wit:

1. That this contract shall be in effect and binding upon the parties hereto from and after the date of signing until July 26, 1947 and thereafter from year to year, unless one party or the other gives notice in writing to the opposite party at least thirty days prior to the expiration of the agreement that it does not want to renew the agreement or that it proposes certain changes therein. If a new agreement cannot be reached within the thirty days, then the existing agreement shall be automatically extended for a period of not more than an additional thirty days during which the negotiations shall be continued before the United States Conciliation Service. But it further provided that either party desiring to change or modify this agreement shall, in writing, set out in full a proposal of said changes, to the other party, and if said other party shall accept said changes, then said changes shall become binding upon both parties at any time mutually agreed upon from the date of [fol. 31] said acceptance, but this time interval shall not exceed thirty days from the date of said approval.

2. Except as further provided in section three below, the Company agrees to employ none but members of the Union in good standing in all departments used by the Company in the conduct of its business, except further that this provision shall not include members of the office force, executives and foremen, and those employees that have the right to hire and discharge, and shall not include salesmen and junk dealers buying and selling for the Company outside of the plant of the Company.

3. If the union is not in a position to supply a sufficient number of competent employees, the Company may hire non-union employees provided however, that the non-union employees thus hired shall not be objectionable to the Union as ascertained during the first two weeks of their

employment by the Company and that all such new help, either union or non-union members, hired by the Company shall be allowed to work for two work weeks in order to ascertain if they are satisfactory to said Company and at the end of the second work week if said employee is satisfactory then said employee shall make or shall have made application to join said Federal Labor Union #19129 and said new employee shall be informed of this requirement by the Company at the time of entering such service. At the end of the second work week of said new employee, the Union agrees to admit such new employee into membership in the Union, provided that all of the conditions hereinbefore specified shall have been complied with. Whenever any employee shall cease to be a member in good standing with the Union and when the Union shall have given written notice to the Company to that effect, the Company agrees to discharge said employe from its service at the end of the work week in which said notice of failure to maintain good standing in the Union is received.

[fol. 32] 4. The Company and the Union, after an intensive, detailed study of the problem of reclassification of hourly-paid employees, have agreed to the job classifications and basic rates of pay therefore as shown on "Schedule A" hereto annexed and made a part hereof. The increased rates shown on said schedule shall be effective as of July 26, 1946, and shall continue during the period of this contract and shall be submitted to any Governmental agency which, by an executive order, or by Act of Congress, is required to approve such wage changes.

The Company will confer with the Union should any dispute arise as to the classification of an individual employee and should the parties be unable to agree, the matter shall be considered a grievance subject to the procedure herein provided for the adjustment thereof.

Grade advancements will continue to be made by the Company substantially in accordance with the present practice.

5. It is mutually agreed that the day work shall be performed between the hours of 7 a. m. and 6 p. m. Night work shall be performed between the hours of 6 p. m. and 7 a. m. Time begins and ends with employee at his station or place

of actual work. All overtime will be allowed only if time card is O.K.ed by foreman in charge.

6. It is mutually agreed that all work performed by any member of the Union in excess of eight hours in any one day (or night) and in excess of forty hours in any one week, shall be compensated for at time and one-half his regular hourly rate. No employee shall be paid both daily and weekly overtime for the same hours so worked. The following days are hereby declared to be holidays: Sundays and the following six legal holidays: Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day, New Years Day, or days celebrated as such. All work performed on such holidays or days celebrated as such shall be paid [fol. 33] for at the rate of time and one-half the regular rate and such overtime shall be in addition to any overtime paid for work for the stipulated work week. However, it is understood that no employee may be paid for the same holiday twice in one calendar year. (Such as for Sunday work when a holiday occurs thereon but is celebrated on the Monday following.)

The Employer agrees that no work will be performed on Christmas Day, New Year's Day and July 4th. Employees shall be paid for such holidays at their regular rate of pay.

7. All employees of the Company within the terms of this agreement shall receive a vacation with full pay for one week, provided he or she shall have been in the service of the Company for period of not less than forty work weeks during the last year and such vacation period shall be fixed by the Company and pay for the same shall be given in advance of the time of the commencement of the vacation period of each employee. All employees with three or more years service shall receive two weeks vacation with pay.

8. It is mutually agreed that there shall be no strikes, lockouts, picketing or other similar interruptions of work during the life of this agreement, except such as provided for in provision eleven of this agreement.

9. The Company shall have the right to change any employee from one department to another, either temporarily or permanently. However, any and all employees' seniority shall hold good regardless of what department he or she may be working in. Employees shall not be sub-

jected to any reduction of rates by virtue of transfers from one classification to another or from one department to another which are of a temporary nature, except by mutual agreement of the Company and the Union i.e. (Employee [fol. 34] taught job of higher pay rate and receives higher pay rate as long as he is on that temporary advancement but reverts back to original pay when that job is completed.

10. In making promotions the Company agrees that senior employees who are competent shall be given preference. In the matter of layoffs, the oldest employees in terms of seniority, and competent to fill the available positions shall be retained. Seniority of workers shall be the relative status of employees in a department in respect to length of service with the company. Length of service shall be the total service with the Company excluding any service prior to a quit or discharge. Should any controversy regarding seniority arise, the matter shall be submitted to arbitration as provided herein.

11. No employee shall be required to report for work unless he shall be paid at least two hours pay.

12. The company and Union agree that the wage question may be opened after a thirty-day notice has been submitted by either party.

13. The Union shall appoint a committee of not less than three nor more than five from among its members employed by the employer who shall act as the Grievance Committee. There shall not be more than one member of this committee from any particular department.

14. All Building Construction work shall be done by the Lincoln Building and Construction Trades Council affiliated with the American Federation of Labor.

Should any difference arise between the Employer and the Union or between the Employer and any of its employees covered by this contract, there shall be an earnest effort to settle such difference through the following procedure in the order named:

(1) By a conference between the foremen of the Depart- [fol. 35] ment, a member of the union grievance committee, and the employee or employees involved.

(2) By conference between the union grievance committee and the Vice-President of the Company in charge of operations or his designated assistant.

(3) By conference between an American Federation of Labor representative and the President of the Company.

(4) If the difference is not adjusted by the above procedure, it shall be referred to a Board of Arbitration. The Board of Arbitration shall consist of two members to be selected by the Employer and two members to be selected by the Union. If a majority of these members cannot arrive at a decision within forty-eight hours after the first meeting, they shall select a fifth member within three days (Sundays and holidays excluded) after the expiration of forty-eight hours. If they cannot agree upon the fifth member within this time, the fifth member shall be appointed by the Director of the Conciliation Service of the United States Department of Labor. A decision of a majority of the Board of Arbitration shall be final and binding upon all parties to this agreement.

Unless the Employer shall have failed to comply with the decision of the Board of Arbitration, there shall be no lockout by the Employer.

Each representative of the Union officially designated and recognized by this agreement who loses time, during his working hours, in handling grievances in the manner provided in this agreement shall receive pay therefore at his average earned rate, computed on the basis of his previous pay period and without the inclusion of overtime earnings.

The Employer agrees to maintain files of applicants for positions and to judge qualifications solely upon merit—physical, mental, moral, personal, etc., and experience as [fol. 36] determined by the Personnel Department and Executive concerned jointly. These files shall be open to inspection and review by the members of the Grievance Committee of the Union whenever a worker files a Grievance in writing with the Union, provided that only file cards subject to such review by said Committee shall be those of the alleged aggrieved person and the person or persons contributory thereto.

In all cases where the Union or a member thereof submits a cause for Grievance in writing, the alleged Grievance

shall be taken before the Company in the manner provided by the terms of this agreement in not over thirty days after the cause of the complaint occurred.

In witness whereof we have hereunto attached our signatures this 2nd day of August, 1946.

Northwestern Iron & Metal Company, by D. Hill, President; Lincoln Federal Labor Union #19129, by Harry Brehm, by A. P. Kildow, by Henry Reichel, by Patrick McCartney, American Federation of Labor Representative. Witnesses: Leo Hill, F. L. Duckworth.

[fol. 37]

Schedule A

Crew Chief — $.05 per hour above highest rate in crew.

Iron Yard Department

Crane Operator — $1.05 per hour
Welder and Tool Repairer — 1.15 per hour
Tin Baler Operator — .93½ per hour
Cutting Torch Operator

Base	4 weeks	8 weeks	3 months
.80	.85	.90	.93½ per hour

Shear Operator

Base	4 weeks
.83½	.88½ per hour

Iron Sorter — .83½ per hour
Common Labor and Baler Helpers

Base	4 weeks	8 weeks	3 months
.73½	.75	.77	.78½ per hour

Metal Processing Department

Metal Sorters — $ .93½ per hour
Metal Sorters' Helper — .88½ per hour
Metal Unloaders and Laborers

Base	4 weeks	8 weeks	3 months
.73½	.75	.77	.78½ per hour

Metal Baler and Shear Operator — .83½ per hour
Furnace Tenders for Metal Foundry

Base	4 weeks	8 weeks	3 months
.78½	.83½	.85½	.88½ per hour

Cupola Tapper
Lift Truck Operator — .95 per hour

Base	4 weeks
.80	.85

Paper and Rag Department

Paper and Rag Sorters—Women

Base	4 weeks	8 weeks
.55	.60	.63½ per hour

Paper and Rag Baler Operator — .90 per hour
Paper Operator Supplies — .90 per hour
Paper Bale Helper — .83½ per hour
Shipping and receiving clerk — .88½ per hour

All employees on the second shift shall receive five cents (5¢) per hour extra as premium pay.

[File Endorsement Omitted]

[fol. 38] IN THE DISTRICT COURT FOR LANCASTER COUNTY

[Title omitted]

PETITION OF INTERVENTION OF NEBRASKA SMALL BUSINESS MEN'S ASSOCIATION—Filed April 2, 1947

Comes now the Nebraska Small Business Men's Association and shows the Court that it has an interest in the matter in litigation in this suit and in the success of the defendants and against the plaintiffs in this action, which interest is more fully shown by the following facts:

1. This Intervenor is a non-profit corporation organized and existing under and by virtue of the laws of the State of Nebraska. Its membership consists of more than 250 individuals, partnerships and corporations who are engaged in business in the State of Nebraska. Its members are located in some twenty-five cities in twenty-four counties scattered throughout the State of Nebraska. The members of the Intervenor have various numbers of employees, some employ as few as half a dozen employees, and some employ several hundred employees. Some such members are engaged in interstate commerce and are subject to the National Labor Relations Act, and others are not. Some such members have and some have not [fol. 39] collective bargaining agreements with labor unions, and of those who have such agreements, some have had, until the effective date of the so-called "Anti-Closed-Shop Amendment" or "Right-to-Work Amendment," union-shop or maintenance-of membership agreements, and some have never had such agreements.

2. The constitutional amendment set forth in Paragraph 32 of the plaintiffs' petition and referred to by some as the "Anti-Closed-Shop Amendment" and by others as the "Right-to-Work Amendment," and which the plaintiffs ask this Court to declare unconstitutional and void, was proposed by this Intervenor. Signatures to the petitions which placed said amendment on the ballot were obtained by this Intervenor. Intervenor was a defendant in a suit by which plaintiffs attempted to keep said amendment from being voted on by the electorate, and said litigation was defended by this Intervenor and by the Attorney General of the State of Nebraska.

3. Because of the fact that this Intervenor was instrumental in bringing about the adoption of said "Right-to-Work Amendment," and the fact that Intervenor's members are employers who have been and are being subjected by labor unions to demands for union-shop contracts under threat of strike and boycott, Intervenor has a special interest in upholding the validity of said constitutional amendment.

Wherefore, this Intervenor prays that the Court enter an order making it a party defendant to this action, and that it be given leave to file herein the motion to strike, submitted herewith.

Nebraska Small Business Men's Association, by Swarr May Royce Smith & Story and Ralph W. Slocum, Its Attorneys.

[fol. 40] *Duly sworn to by Edson Smith. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 41] In District Court of Lancaster County

[Title omitted]

Minute Entry—April 4, 1947

This cause now comes on to be heard on motion of intervenor Nebraska Small Business Men's Association to strike certain portions from the plaintiff's petition filed herein, and is argued and submitted.

In District Court of Lancaster County

[Title omitted]

Order Overruling Defendants' Objections, Etc.—April 9, 1947

Objections of defendants Northwestern Iron and Metal Company, and Dan Giebelhouse to petition of intervention

of Nebraska Small Businessmen's Association are on this day overruled by the Court and said Nebraska Small Businessmen's Association given leave to file petition in intervention and motion to strike instanter.

[fol. 42] [File endorsement omitted]

IN THE DISTRICT COURT FOR LANCASTER COUNTY

[Title omitted]

DEMURRER—Filed May 7, 1947

Comes now the State of Nebraska, one of the defendants in the above cause, and hereby demurs to the petition of the plaintiffs filed herein for the reason that said petition fails to state facts sufficient to constitute a cause of action against the defendants.

State of Nebraska, Defendant; by Walter R. Johnson, Attorney General; by Robert A. Nelson, Assistant Attorney General; Edward R. Burke, Special Assistant Attorney General, Its Attorneys.

[fol. 43] [File endorsement omitted]

IN THE DISTRICT COURT FOR LANCASTER COUNTY

[Title omitted]

MOTION OF NEBRASKA SMALL BUSINESS MEN'S ASSOCIATION FOR JUDGMENT ON THE PLEADINGS—Filed May 7, 1947

Comes now the Nebraska Small Business Men's Association, intervening defendant, and moves the Court to enter judgment in its favor and against the plaintiffs upon the pleadings heretofore filed in this case, to-wit, upon plaintiff's petition, for the reason that the facts well pleaded in said petition do not entitle plaintiffs to any of the relief prayed for, but, on the contrary, such facts, together with the facts of which this Court takes judicial notice, show that the so-called Right-to-Work or Anti-Closed-Shop Amendment is valid, and that the Union Shop contract set

forth in plaintiffs' petition is therefore invalid and unenforcible.

Wherefore, this intervening defendant prays that the Court enter its judgment finding, declaring, and adjudging as follows:

1. That the said Right-to-Work or Anti-Closed-Shop Amendment, set forth in Paragraph 32 of plaintiffs' petition, is constitutional and valid.

[fol. 44] 2. That Paragraph 3 of the collective bargaining agreement attached to plaintiffs' petition as Exhibit "B," set forth at Paragraph 17 of plaintiffs' petition, is invalid and unenforcible by reason of said constitutional amendment.

3. That the costs of this suit be taxed against the plaintiffs.

Nebraska Small Business Men's Association, Intervening Defendant, by Swarr May Royce Smith & Story and Ralph W. Slocum, Its Attorneys.

Copy sent to Atty. Gen., copy mailed to Finkelstein, copy handed to Gradwohl, May 6, 1947. Ralph W. Slocum.

[fol. 45] [File endorsement omitted]

IN THE DISTRICT COURT OF LANCASTER COUNTY

[Title omitted]

MOTION OF NORTHWESTERN IRON AND METAL COMPANY AND DAN GIEBELHOUSE FOR A JUDGMENT ON THE PLEADINGS—Filed May 8, 1947.

Come now the Northwestern Iron and Metal Company and Dan Giebelhouse, defendants in the above entitled action and each by its and his attorney move the court to enter a judgment in favor of each of said moving defendants and against the plaintiffs upon the pleadings filed in this case and upon the plaintiffs' petition for the reasons that the allegations of fact well pleaded and set out in said petition do not entitle the plaintiffs to any of the relief prayed for, but the allegations of fact well pleaded and set

forth in said petition together with the facts of which this court takes judicial notice clearly shows that pursuant to said facts and the law applicable, the Amendment to the Constitution of the State of Nebraska which was adopted by the people of the State of Nebraska on November 5, 1946, and which Amendment the governor of the State of Nebraska proclaimed, received a majority of the votes cast, is constitutional, binding and in full force and effect from and after the 12th day of December, 1946, the date of said proclamation by said governor. The said Amendment, which is set forth in full in Paragraph 32, Pages 15 and 16 of the plaintiff's petition, is valid and binding, and that the [fol. 46] said Amendment does not contravene any part of the Constitution of the United States nor the National Labor Relations Act, and that by reason of said Constitutional Amendment of the State of Nebraska Paragraph 3 of the contract entered into by and between the plaintiff, Lincoln Federal Labor Union #19129 and the defendant, Northwestern Iron and Metal Company, on July 26, 1946, is, since the 12th day of December, 1946, illegal, invalid and unenforcible.

Wherefore these moving defendants move that the court enter a judgment in this case declaring, finding and adjudging that:

1. The said Amendment to the Constitution of the State of Nebraska adopted by the vote of the people of said State on November 5, 1946 and proclaimed by the governor to be in full force and effect on December 12, 1946, and fully set forth in Paragraph 32, Pages 15 and 16 of plaintiffs' petition is valid and binding and does not contravene any provisions in the Constitution of the United States of America.

2. That the said Constitutional Amendment of the State of Nebraska does not contravene and does not deny to the plaintiffs the rights guaranteed in the First Amendment to the Constitution of the United States.

3. That the said Constitutional Amendment of the State of Nebraska does not contravene and does not deny to the plaintiffs, the rights guaranteed by Article 1, Section 10 of the Constitution of the United States.

4. That the said Constitutional Amendment of the State of Nebraska does not contravene and does not deprive the

plaintiffs of any of the rights guaranteed to said plaintiffs in the National Labor Relations Act, Title 29, Sections 151 166, inclusive, United States Code Annotated, and does not violate the public policy and laws of the United States, but, [fol. 47] on the contrary, is fully in harmony with the spirit and purpose of said National Labor Relations Act and with the public policy and laws of the United States to prevent any sort of discrimination in employer and employee relationships.

5. That the said Constitutional Amendment of the State of Nebraska does not contravene and does not deny any of the rights guaranteed to the plaintiffs in Article VI of the Constitution of the United States.

6. That the said Constitutional Amendment of the State of Nebraska does not contravene and does not deny to the plaintiff any of the rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

7. That the said Constitutional Amendment of the State of Nebraska does not constitute class legislation, but is all inclusive to all employers and employees of said state.

8. That Paragraph 3 of the contract entered into by and between the plaintiff, Lincoln Federal Labor Union # 19129 and the defendant, Northwestern Iron and Metal Company, which is set forth in Paragraph 17, Page 9 of the plaintiffs' petition, is, since the 12th day of December, 1946, illegal, invalid and unenforcible by reason of the adoption of said Amendment to the State Constitution by the people of the State of Nebraska.

9. That the costs of this suit be taxed against the plaintiffs.

Northwestern Iron and Metal Company and Dan Giebelhouse, Defendants, by Louis W. Finkelstein, Their Attorney.

[fol. 48] In District Court of Lancaster County

Lincoln Federal Labor Union No. 19129; American Federation of Labor; Nebraska State Federation of Labor; and Henry Reichel, individually and as President of said Lincoln Federal Labor Union #19129, Plaintiffs,

vs.

Northwestern Iron and Metal Company, a Corporation; Dan Giebelhouse; and State of Nebraska, Defendants, and Nebraska Small Business Men's Association,

Intervening Defendant

Declaratory Judgment—July 7, 1947

This matter came on to be heard on the 26th day of May, 1947, upon the petition of the plaintiffs, the demurrer of the State of Nebraska, the motion for judgment on the pleadings of the defendants, Northwestern Iron and Metal Company and Dan Giebelhouse, and the motion for a judgment on the pleadings of the intervening defendants, Nebraska Small Business Men's Association; all parties were represented in court by their counsel; the matter was submitted to the court upon the oral arguments of the counsel and upon their written briefs.

On the 13th day of June, 1947, in open court, all parties hereto being present by their counsel, the court finds and determines that the demurrer and the motions for judgment on the pleadings admit all of the facts in said petition which are will pleaded; the court further finds that the issue presented by the demurrer and the motions for judgment on the pleadings is the validity, under the Constitution and [fol. 49] Laws of the United States, of the constitutional amendment adopted by the electors of the State of Nebraska, at the general election held on the 5th day of November, 1946, and the court being well advised in the premises, finds and determines that said amendment is valid and a proper exercise of the police powers of the State, and that, therefore, the said demurrer and the said motions for judgment on the pleadings should be sustained.

That the plaintiff's counsel announced in open court that plaintiffs would not amend their petition or plead further, but would stand upon their petition as heretofore filed.

It Is Therefore Declared, Ordered, Adjudged, and Decreed:

1. That the objective of the said amendment now designated as Sections 13, 14 and 15 of Article XV of the Constitution of the State of Nebraska, is to prevent the denial of employment to any person because of membership in or affiliation with, or resignation or expulsion from a labor organization or because of refusal to join or affiliate with a labor organization; that the terms of said amendment are no broader than necessary to carry out its objective; that the terms of said amendment, make unlawful and void, from its effective date, December 12, 1946, any closed shop, union shop, or maintenance of membership agreement, insofar as applicable to employment in Nebraska, regardless of whether such agreement was executed before or after said effective date;

2. That the particular phase of employer-employee relations covered by said amendment has a definite relationship to the public welfare, and is subject to the police power of the state; that said amendment is not unreasonable, arbitrary or capricious; that the means selected have a real and substantial relation to the object sought to be attained by said amendment;

[fol. 50] 3. That said amendment does not violate or conflict with any provision of the Constitution of the United States of America;

4. That the said amendment to the Constitution of the State of Nebraska does not conflict with, impair, violate, or contradict, any provision of the National Labor Relations Act nor the Labor Management Relations Act, 1947, and does not deprive the plaintiffs of any of the rights guaranteed to said plaintiffs by the said Acts;

5. That said amendment is in all respects valid;

6. That by reason of said amendment, the union shop provisions of the collective bargaining agreement between the plaintiff Lincoln Federal Labor Union #19129 and the defendant Northwestern Iron and Metal Company, including Paragraphs 2 and 3 thereof, are null and void and have been null and void and unenforceable since December 12, 1946, the effective date of said constitutional amendment;

7. That the refusal by the defendant Northwestern Iron and Metal Company to discharge the defendant Dan Giebelhouse, upon the demand of plaintiff Lincoln Federal Labor Union #19129 for his discharge based on his failure to maintain good standing in said Union, was lawful and proper, and compliance with said demand would have been unlawful and a violation of said constitutional amendment;

8. It is further ordered, adjudged, and decreed that the demurrer of the State of Nebraska is herewith sustained and the plaintiff's counsel having announced in open court that the plaintiffs would not amend their petition or plead further, the petition against the State of Nebraska is hereby dismissed.

9. It is further ordered that each party shall pay its own [fol. 51] costs.

Dated this 7th day of July, 1947.

By the Court, Ralph P. Wilson, District Judge.

[fol. 52] [File endorsement omitted]

IN THE DISTRICT COURT FOR LANCASTER COUNTY

[Title omitted]

PLAINTIFFS' MOTION FOR NEW TRIAL—Filed July 7, 1947

Come now each of the plaintiffs, separately and severally, and each for itself or himself moves the court to vacate the judgment entered herein and grant to each of said plaintiffs a new trial for each of the following causes:

1. The judgment is contrary to law.

2. The judgment is not sustained by the pleadings.

3. The judgment is contrary to the pleadings.

4. Errors of law occurring at the trial and excepted to by the plaintiffs.

5. The court erred in failing to overrule and in sustaining the motion of defendant Northwestern Iron and Metal Company and defendant Dan Giebelhouse for judgment on the pleadings.

6. The court erred in failing to overrule and in sustaining the motion of defendant Nebraska Small Business Men's Association for judgment on the pleadings.

7. The court erred in failing to overrule and in sustaining [fol. 53] the demurrer of the State of Nebraska.

8. The court erred in entering judgment against the plaintiffs, and each of them, in favor of the defendants.

9. The court erred in dismissing the plaintiffs' petition against the State of Nebraska.

10. The court erred in failing to enter judgment in favor of the plaintiffs, and each of them, against the defendants.

11. The court erred in finding and holding that the so-called Anti-Closed-Shop Amendment (hereinafter referred to as the Amendment) is a valid and proper exercise of the police powers of the State, and in failing to hold that said Amendment is not within such police powers.

12. The court erred in holding that a closed shop, union shop or maintenance of membership agreement is unlawful and void, and in failing to hold that each such agreement is lawful and valid.

13. The court erred in holding that the Amendment does not violate or conflict with any provision of the United States Constitution.

14. The court erred in holding that the said Amendment is in all respects valid and in failing to hold that it is unconstitutional and void under the United States Constitution.

15. The court erred in holding that the Amendment does not conflict with, impair, violate or contradict any provision of the National Labor Relations Act, or deprive the plaintiffs of any of the rights guaranteed by the said Act.

16. The court erred in holding that the said Amendment does not conflict with, impair, violate or contradict any provision of the Labor Management Relations Act of 1947, or deprive the plaintiffs of any rights guaranteed by the said Act.

17. The court erred in holding that the union shop provi- [fol. 54] sions of the collective bargaining agreement herein,

including paragraphs two and three thereof, are null and void.

18. The court erred in holding that the refusal of defendant Northwestern Iron and Metal Company to discharge the defendant Giebelhouse was lawful and proper and that compliance with the demand to discharge him would have been unlawful.

19. The court erred in failing to hold that the said collective bargaining agreement was valid and enforcible in all respects.

20. The court erred in failing to order the defendant Northwestern Iron and Metal Company to specifically perform the said collective bargaining agreement in all of its provisions and to discharge the defendant Giebelhouse from its employ.

21. The court erred in failing to enjoin the defendant Northwestern Iron and Metal Company from continuing the defendant Giebelhouse in its employ.

22. The court erred in failing to grant each and every portion of the relief prayed for in the plaintiffs' petition.

23. The court erred in failing to hold that the Amendment arbitrarily and unreasonably impairs the obligations of existing contracts in violation of Article One, Section Ten of the United States Constitution.

24. The court erred in failing to hold that the Amendment arbitrarily and unreasonably deprives unions and employers, including each of the plaintiffs herein, of freedom of contract in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.

25. The court erred in failing to hold that the Amendment is discriminatory and constitutes class legislation, denying unions and union members the equal protection of the laws contrary to the Fourteenth Amendment of the United States Constitution.

[fol. 55] 26. The court erred in failing to hold that the Amendment impairs and previously restrains the exercise of the civil rights of assembly and speech and other rights guaranteed to the plaintiffs under the First Amendment to the United States Constitution.

27. The court erred in failing to hold that the Amendment is in conflict with the commerce clause of the United States Constitution, Article One, Section Eight, and the actions of the Congress of the United States in occupying and preempting the field in question in the case at bar.

28. The court erred in failing to hold that the Amendment is in conflict with the National Labor Relations Act in violation of the said commerce clause and of Article Six, Section Two of the United States Constitution.

29. The court erred in failing to hold that the Amendment is in conflict with the Labor Management Relations Act of 1947 in violation of the said commerce clause and of Article Six, Section Two of the United States Constitution.

30. The court erred in failing to hold that the Amendment violates the United States Constitution in each and every respect set forth in the plaintiffs' petition.

31. The court erred in failing to tax all costs herein against the defendants.

32. The court erred in making each finding contained in the said judgment.

33. The court erred in entering each holding, declaration, order and adjudication contained in the said judgment.

Joseph A. Padway, Herbert S. Thatcher, Bernard S. Gradwohl, Attorneys for Plaintiffs.

[fol. 56] IN DISTRICT COURT OF LANCASTER COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL—July 7, 1947

This cause now comes on to be heard on motion of plaintiffs, separately and severally, to vacate judgment heretofore entered herein and to grant to each of said plaintiffs a new trial and is submitted to the Court, on due consideration whereof, the Court doth overrule said motions.

[fol. 57] IN THE DISTRICT COURT FOR LANCASTER COUNTY

PLAINTIFFS' NOTICE OF APPEAL—Filed July 9, 1947

To the above named defendants and each of them, including the intervening defendant:

You are hereby notified that the plaintiffs intend to prosecute an appeal, and do hereby appeal, to the Supreme Court of Nebraska from the judgment entered herein on July 7, 1947, and from the order overruling the motions for new trial entered herein on July 7, 1947, and from each and all other orders entered herein adverse to the plaintiffs.

Joseph A. Padway, Herbert S. Thatcher, Bernard S. Gradwohl, Attorneys for Plaintiffs, Appellants.

[fols. 58-59] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 60] And afterwards, to wit, on the 12th day of September, 1947, there was filed in the office of the Clerk of said Supreme Court of Nebraska certain Briefs of appellants containing Assignments of Error in the words and figures following, to wit:

[fol. 61] IN SUPREME COURT OF NEBRASKA

ASSIGNMENTS OF ERROR

1. The judgment is contrary to law.

2. The court erred in holding that a closed shop, union shop or maintenance of membership relationship is unlawful or void.

3. The court erred in holding that the union shop provisions of the contract in the case at bar are void and unenforceable.

4. The court erred in holding that the so-called Nebraska Anti-Closed Shop Amendment does not violate any of the provisions of the United States constitution.

5. The court erred in holding that the said amendment does not impair the obligations of existing contracts in vio-

lation of Article I, Section 10, of the United States Constitution.

6. The court erred in holding that the said Amendment does not constitute a deprivation of freedom of contract in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

7. The court erred in holding that the said Amendment is not discriminatory and class legislation in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

8. The court erred in holding that the said Amendment does not impair and previously restrain the exercise of the civil rights of assembly and speech guaranteed under the First Amendment to the United States Constitution, and as protected against State invasion by the Fourteenth Amendment.

9. The court erred in sustaining the defendants' demurrer and motions for judgment on the pleadings.

[fols. 62-63] 10. The court erred in entering judgment in favor of the defendants and in dismissing the plaintiffs' petition.

11. The court erred in not entering judgment in favor of the plaintiffs for each and all portions of the relief prayed for in plaintiffs' petition.

12. The court erred in overruling plaintiffs' motion for new trial.

[fols. 64-65] In Supreme Court of Nebraska

Order of Submission—November 3, 1947

The following causes were argued by counsel and submitted to the Court:

No. 32342 Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., Appeal, Lancaster County

* * * * * * *

Robert G. Simmons, Chief Justice.

[fols. 66-67] IN SUPREME COURT OF NEBRASKA

Appeal from the District Court of Lancaster County

No. 32342

LINCOLN FEDERAL LABOR UNION #19129, et al., Appellants,

v.

NORTHWESTERN IRON & METAL COMPANY, a Corporation, et al., Appellees; Nebraska Small Business Men's Association, Intervener, Appellee

JUDGMENT—March 19, 1948

This cause coming on to be heard upon appeal from the district court of Lancaster county, was argued by counsel and submitted to the court; upon due consideration whereof, the court finds no error apparent in the record of the proceedings and judgment of said district court. It is, therefore, considered, ordered and adjudged that said judgment of the district court be, and hereby is, affirmed; that appellees recover of and from appellants their costs herein expended, taxed at $—; for all of which execution is hereby awarded, and that a mandate issue accordingly.

Robert G. Simmons, Chief Justice.

[fol. 68] IN SUPREME COURT OF NEBRASKA

32342

LINCOLN FEDERAL LABOR UNION NO. 19129

v.

NORTHWESTERN IRON AND METAL COMPANY

Sections 13, 14, and 15, article XV, Constitution of Nebraska, are not in violation of any provision of the Constitution of the United States or in conflict with or repugnant to any federal law, but integrated therewith and, having a relationship to the public welfare, are a reasonable and valid exercise of police power by the state.

[fol. 69] Heard before Simmons, C. J., Paine, Messmore, Yeager, Chappell, and Wenke, JJ., and Landis, District Judge.

Opinion Filed March 19, 1948

CHAPPELL, J.:

By virtue of and in conformity with the self executing provisions of section 2, article III, Constitution of Nebraska, the people of this state lawfully initiated, and on November 5, 1946, by a substantial majority adopted a constitutional amendment, which was proclaimed by the Governor as effective December 11, 1946. The amendment is now designated as sections 13, 14, and 15 of article XV, Constitution of Nebraska. See R. S. Supp. 1947. Hereinafter in this opinion it will be called the amendment.

This action was originally instituted by plaintiffs in the district court for Lancaster County to obtain a declaratory judgment with respect to the interpretation and constitutional validity of the amendment and to obtain equitable relief by specific performance and injunction. Defendant State of Nebraska filed a general demurrer to plaintiffs' petition, and all other defendants filed motions for judgment on the pleadings, thus making the issues entirely of law under such facts as were well pleaded in plaintiffs' petition.

The constitutional issues arose by virtue of plaintiffs' allegations that defendant Northwestern Iron and Metal Company, engaged in intrastate and interstate commerce, had breached its contract with plaintiff, Lincoln Federal Labor Union No. 19129, by the terms of which defendant company had agreed to discharge any employee who ceased to remain a member of the union in good standing. When defendant Dan Giebelhouse was suspended from plaintiff union for non payment of dues, the company, upon notice thereof and demand by the union for his discharge, refused to do so, taking the position that the union shop provisions of the contract were invalidated and made unenforceable by virtue of the adoption of the amendment. Plaintiff [fol. 70] Henry Reichel, an employee of defendant company and president of plaintiff Lincoln Federal Labor Union No. 19129, an affiliate of plaintiffs American Federation of Labor and Nebraska State Federation of Labor, took the position that the union shop provisions of the contract were

not invalidated by the adoption of the amendment, because it was unconstitutional for the reasons hereinafter set forth.

As held by this court in Johnson v. Marsh, 146 Neb. 257, 19 N. W. 2d 366: "A general demurrer admits all allegations of fact in the pleading to which it is addressed, which are issuable, relevant, material, and well pleaded; but does not admit the conclusions of the pleader, except when supported by, and necessarily result from, the facts pleaded. It does not admit inferences of the pleader from the facts alleged, nor mere expressions of opinion, nor theories of the pleader, nor allegations of the pleader as to what will happen in the future, nor arguments, nor allegations contrary to the facts of which judicial notice is taken or which are contrary to law." See, also, 41 Am. Jur., Pleadings, s. 244, p. 463, and Louisville & Nashville R. R. Co. v. Palmes, 109 U. S. 244, 3 S. Ct. 193, 27 L. Ed. 922.

Since a motion for judgment on the pleadings is in the nature of a demurrer and is in substance both a motion and a demurrer, it has application in like manner as a demurrer under circumstances similar to those presented in the case at bar. See, Vaughan v. Omaha Wimsett System Co., 143 Neb. 470, 9 N. W. 2d 792; State ex rel. Western Reference & Bond Assn. v. Kinney, 138 Neb. 574, 293 N. W. 393, reversed on other grounds as Olsen v. Nebraska, 131 U. S. 236, 61 S. Ct. 862, 85 L. Ed. 1305, 133 A. L. R. 1500.

In the light of the foregoing rules, the trial court sustained the demurrer and motion for judgment on the plead- [fol. 71] ings. Plaintiffs having elected to stand upon their petition, a judgment was entered in favor of defendants, declaring the amendment not in conflict with any federal law and constitutional as within the police power of the state, thereby making unlawful and unenforceable in Nebraska the provisions of the agreement between the parties whereby defendant agreed to discharge any employee who ceased to remain a member of the union in good standing, regardless of whether such agreement was executed before or after the effective date of the amendment.

Plaintiffs' motions for new trial were overruled, and they appealed to this court. In their brief they set forth at length some 12 assignments of alleged er. or. They may be summarized, however, as contending that the judgment of the trial court was contrary to law. Plaintiffs argued primarily that the amendment: (1) Impairs and previously

restrains the exercise of the civil rights of assembly and speech guaranteed under the First Amendment, and as protected against state invasion by the Fourteenth Amendment; (2) constitutes class legislation and is highly discriminatory, denying unions and union members the equal protection of the laws, contrary to the Fourteenth Amendment; and, (3) arbitrarily and unreasonably impairs the obligations of existing contracts in violation of article I, section 10, and arbitrarily and unreasonably deprives plaintiffs of rights, liberties, and freedoms protected under the due process clause of the Fourteenth Amendment. We conclude that those contentions cannot be sustained.

The amendment specifically provides: "Sec. 13. No person shall be denied employment because of membership in or affiliation with, or resignation or expulsion from a labor organization or because of refusal to join or affiliate with a labor organization; nor shall any individual or corporation or association of any kind enter into any contract, written or oral, to exclude persons from employment be- [fol. 72] cause of membership in or non-membership in a labor organization. Sec. 14. The term 'labor organization' means any organization of any kind, or any agency or employee representation committee of plan, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Sec. 15. This article is self-executing and shall supersede all provisions in conflict therewith; legislation may be enacted to facilitate its operation but no law shall limit or restrict the provisions hereof."

At the outset it should be stated that we are not permitted to base our decision of the issues upon a judicial interpretation of the wisdom of its adoption. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451. We are confronted primarily with a question of sovereign power. As stated in the opinion of Chief Justice Taney in the License Cases, 5 How. 504, 582: "Upon this question the object and motive of the State are of no importance, and cannot influence the decision. It is a question of power." See, also, Carpenters & Joiners Union v. Ritter's Cafe, 315 U.S. 722, 62 S. Ct. 807, 86 L. Ed. 1143.

In Arizona Employers' Liability Cases, 250 U.S. 400, 419, 39 S. Ct. 553, 63 L. Ed. 1058, 6 A. L. R. 1537, it was said:

"The States are left with a wide range of legislative discretion, notwithstanding the provisions of the Fourteenth Amendment; and their conclusions respecting the wisdom of their legislative acts are not reviewable by the courts."

In Hennington v. Georgia, 163 U.S. 299, 16 S. Ct. 1086, 41 L. Ed. 166, it was said: "The whole theory of our government, Federal and state, is hostile to the idea that questions of legislative authority may depend * * * upon opinions of judges as to the wisdom or want of wisdom in the enact-[fol. 73] ment of laws under powers clearly conferred upon the legislature."

As recently as Olsen v. Nebraska, *supra*, the Supreme Court of the United States said: "We are not concerned, however, with the wisdom, need, or appropriateness of the legislation. Differences of opinion on that score suggest a choice which 'should be left where * * * it was left by the Constitution—to the States and to Congress.'"

In S. Buchsbaum & Co. v. Beman, 14 F. Supp. 444, it was said: "Every possible presumption is in favor of the validity of the statute, and this continues until the contrary is shown beyond a rational doubt. In no doubtful case should a legislative act be pronounced contrary to the Constitution. One branch of the government cannot encroach upon the domain of another without danger. The safety of our institutions depends upon a strict observance of this salutary rule." See, also, Sinking Fund Cases, 99 U.S. 700, 25 L. Ed. 496; Nicol v. Ames, 173 U.S. 509, 19 S. Ct. 522, 43 L. Ed. 786; Fairbank v. United States, 181 U.S. 283, 21 S. Ct. 648, 45 L. Ed. 862; Lennox v. Housing Authority of City of Omaha, *supra*; 16 C. J. S., Constitutional Law, s. 99, p. 250.

In National Labor Relations Board v. Jones & Laughlin, 301 U.S. 1, 30, 57 S. Ct. 615, 81 L. Ed. 893, 108 A. L. R. 1352, it was said: "The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same." See, also, S. Buchsbaum & Co. v. Beman, *supra*; Panama R. R. Co. v. Johnson, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748; Blodgett v. Holden, 275 U. S. 142, 48 S. Ct. 105, 72 L. Ed. 206; Lucas v. Alexander, 279 U.S. 573, 49 S. Ct. 426, 73 L. Ed. 851, 61 A. L. R. 906.

[fol. 74] As a matter of course, the above rules have application in determining the validity of a constitutional amendment adopted by virtue of the initiative, the first power constitutionally reserved by the people of this state.

All of which brings us to an interpregation of the amendment. It will be observed that section 14 thereof defines the term "labor organization" in the equivalent language used not only in the National Labor Relations Act, Title 29, U.S.C.A., s. 152 (5), but also in the Labor Management Relations Act, 1947, c. 120, Public Law 101, s. 2 (5). Therefore, nothing provided therein could effect the constitutionality of the amendment. No contention is made otherwise.

The constitutional questions are involved primarily because of sections 13 and 15. As we construe section 13, the first part thereof, down to the ";" simply provides that the hiring and firing of no individual shall be dependent upon his membership or non membership in a labor organization. He is thereby made free to "associate with his fellows" in a union entirely upon its merits, or to "decline to associate with his fellows" without imperiling his right either to obtain employment or to continue therein after having obtained it. In other words, the lawful right of the individual to enter employment and his lawful right to continue in his employment cannot be lawfully made to depend either upon the one condition or the other, and he is given a cause of action for violation of that right.

The second part of section 13, after ";" is simply a correlation of the first and imposes the quality of illegality upon the provisions of any contract which would violate the first by excluding any person from employment because of membership or non-membership in a labor organization, and makes such provisions of any contract invalid and unenforceable as between the parties, without in any logical [fol. 75] sense impairing or abridging the right of employees to self organization and collective bargaining, established by Title 29, U.S.C.A., s. 157, hereinafter discussed.

It will be noted that section 15 makes the amendment self executing, and it thereby became operative upon all such contracts as of its effective date. Therefore, if constitutionally valid as an exercise of the police power of the state, the amendment has application to prevent the enforcement of such provisions in all contracts, whether executed prior to or after the effective date of the amendment.

As we view the matter, however, and as the parties involved herein, as well as the trial court, must also have viewed it, the amendment was not intended to and could not so operate as to invalidate and make unenforceable all the other valid provisions of the collective bargaining agreement then existing between the parties. In other words, valid collective bargaining agreements, either existent on the effective date of the amendment or entered into thereafter, would be enforceable in all respects except the provisions in such agreements which would be in conflict with the amendment.

It was argued in the district court that the amendment was invalid because in conflict with the National Labor Relations Act. However, since that argument was made, Congress has passed the Labor Management Relations Act of 1947, which, after specifically amending the National Labor Relations Act, provided, among other things: "Sec. 14. (b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

While such provision would seem to conclusively dispose [fol. 76] of plaintiffs' argument, the constitutionality thereof has not yet been determined, and, since plaintiffs still contend that the amendment conflicts with paramount federal law, we feel impelled to discuss and decide plaintiffs' contention.

The constitutionality of the National Labor Relations Act has been conclusively affirmed, and in a manner clearly indicating that the validity of the above provision of the Labor Management Relations Act will also be constitutionally affirmed. See National Labor Relations Board v. Jones & Laughlin, *supra*. In any event we conclude that the amendment was not in conflict with the National Labor Relations Act, and, having been adopted prior to enactment of the Labor Management Relations Act, the amendment is integrated therewith.

It was said in Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 67 S. Ct. 1026, 91 L. Ed. 887: "In the National Labor Relations Act, Congress has sought to reach some aspects of the employer-employee relation out of which such interferences arise. It has dealt with the subject or relationship but partially, and has left

outside of the scope of its delegation other closely related matters. Where it leaves the employer-employee relation free of regulation in some aspects, it implies that in such matters federal policy is indifferent, and since it is indifferent to what the individual of his own volition may do we can only assume it to be equally indifferent to what he may do under the compulsion of the state."

Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U.S. 740, 62 S. Ct. 820, 86 L. Ed. 1154, is authority for the proposition that the intent of Congress to exclude the states from exercising their police power in the field of commerce must be clearly manifest. In discussing the National Labor Relation Act and its relationship to that premise, the court said: "* * * an 'intention of Congress [fol. 77] 'to exclude States from exerting their police power must be clearly manifested.' * * * We will not lightly infer that Congress by the mere passage of a federal Act has impaired the traditional sovereignty of the several States in that regard. * * * Nor can we say that the control which Congress has asserted over the subject matter of labor disputes is so pervasive (Cf. Cloverleaf Butter Co. v. Patterson, *ante*, p. 148) as to prevent Wisconsin, under the familiar rule of Pennsylvania R. Co. v. Public Service Comm'n, 250 U.S. 566, 569, from supplementing federal regulation in the manner of this order. Sec. 7 of the federal Act guarantees labor its 'fundamental right' (Labor Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33) to self-organization and collective bargaining. Sec. 8 affords employees protection against unfair labor practices of employers including employer interference with the rights secured by sec. 7. * * *. If the order of the state Board affected the status of the employees, or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise. But since no such right is affected, we conclude that this case is not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes. Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the State Board must be sustained under the rule which has long obtained in this Court. See Sinnot v. Davenport, 22 How. 227, 243."

In Phelps Dodge Corporation v. National Labor Relations Board, 313 U.S. 177, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A.L.R. 1217, it was said: "And so the present Act, codifying this long history, leaves the adjustment of industrial relations to the free play of economic forces but seeks to assure that the play of those forces be truly free. * * * The prohibition [fol. 78] against 'discrimination in regard to hire' must be applied as a means towards the accomplishment of the main object of the legislation. * * *

"The natural construction which the text, the legislative setting and the function of the statute command, does not impose an obligation on the employer to favor union members in hiring employees. He is as free to hire as he is to discharge employees. The statute does not touch 'the normal exercise of the right of the employer to select its employees or to discharge them.' It is directly solely against the abuse of that right by interfering with the countervailing right of self-organization.

"We have already recognized the power of Congress to deny an employer the freedom to discriminate in discharging. Labor Board v. Jones & Laughlin, 301 U.S. 1."

As stated in Associated Press v. National Labor Relations Board, 301 U.S. 103, 132, 57 S. Ct. 650, 81 L. Ed. 953: "The act does not compel the petitioner to employ any one; * * * "

In National Labor Relations Board v. Jones & Laughlin, *supra*, it was said: "The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion."

As stated in National Labor Relations Board v. National Casket Co., 107 Fed. 2d 992: "The purpose of the Act is not to compel an employer to hire members of one union rather than another, or union men rather than non-union men."

In International B. of P.M. v. Wisconsin E.R. Board, 249 [fol. 79] Wis. 362, 24 N.W. 2d 672, the principal contention of the union was that section 8 (3) of the National Labor Relations Act conferred upon unions and employers the

right to enter into an agreement for a closed shop, and that the Wisconsin Employment Peace Act, limiting that right, was in conflict with it.

In that opinion it was said: "Counsel have repeatedly argued to this Court that sec. 8 (3), National Labor Relations Act, already quoted, confers a right. Departing from the precise language of sub. (3), the proviso is as follows: 'Nothing in this act shall preclude an employer from making an agreement with a labor organization which requires as a condition of employment membership in a union.' Just how this clause grants a right, it is difficult to see."

At another point in the opinion it was said: "It is well settled that reports of committees of the house of representatives and of the senate may be consulted to ascertain the intent of Congress as to the meaning of a statute enacted by it. Wright v. Vinton Branch, etc. (1937) 300 U.S. 440, 57 Sup. Ct. 556, 81 L. Ed. 736, 112 A. L. R. 1455, and cases cited in Note 8, p. 1463.

"Referring now to Senate Reports 74th Congress, 1st session (1935) Report No. 573, we find the following (p. 11):

"'Problem of the Closed Shop.

"' * * * Propaganda has been widespread that this proviso attaches special legal sanctions to the closed shop or seeks to impose it upon all industry. This propaganda is absolutely false. * * * The committee feels that this was not the intent of Congress * * *: that it is not the intent of Congress today; and that it is not desirable to interfere in this drastic way with the laws of the several states on this subject.

"'But to prevent similar misconceptions of this bill, the [fol. 80] proviso in question states that nothing in this bill, or in any other law of the United States, or in any code or agreement approved or prescribed thereunder, shall be held to prevent the making of closed-shop agreements between employers and employees. In other words, the bill does nothing to facilitate closed-shop agreements or to make them legal in any state where they may be illegal; it does not interfere with the status quo on this debatable subject but leaves the way open to such agreements as might now legally be consummated, with two exceptions about to be noted.

"'The assertion that the bill favors the closed shop is particularly misleading in view of the fact that the proviso in two respects actually narrows the now existent law regarding closed-shop agreements. * * *

"'Secondly, the bill is extremely careful to forestall the making of closed-shop agreements with organizations that have been "established, maintained, or assisted" by any action defined in the bill as an unfair labor practice. * * *.'"

The opinion then went on to say: "This report sustains the construction of the proviso that we have adopted (International B. of E. W. v. Wisconsin E. R. Board, 245 Wis. 532, 15 N. W. (2d) 823), that is, that it granted no right but if there were any impediments to such an agreement in the laws of the United States, they were removed by the provisions of sec. 8 (3),* * *.

"From the report of the committee it appears that Congress intended to leave state laws regarding the closed shop in force."

Section 14 (b) of the Labor Management Relations Act, which cannot be construed as an invalid delegation of legislative authority, re-established that intent beyond per adventure of a doubt.

The federal public policy in regard to compulsory membership in labor unions was stated in Title 29, U. S. C. A., s. 102, wherein it was said: "* * * he should be free to de-[fol. 81] cline to associate with his fellows, * * *."

Title 29, U. S. C. A., s. 157, provides: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." The amendment involved here cannot be construed as impairing, denying, or abridging the right of employees to join and organize into a union and bargain collectively with an employer in conformity with federal law, as provided in that section. It is a matter of common knowledge that many collective bargaining agreements have been and are now being entered into in this state since the adoption of the amendment, which brooks no interference therewith by the employer, and makes the employee directly free from coercion or discrimination by either the employer or the union or members thereof. It does not prohibit such contracts or the enforcement thereof. It does,

however, simply make invalid and unenforceable as between the parties, any provision therein agreeing to exclude persons from employment because of membership or nonmembership in a labor organization.

We are unable to find any labor legislation enacted by Congress requiring an employee to belong or not belong to a labor organization in order to receive the benefits thereof, or for any other purpose. As a matter of fact, the Railway Labor Act, Title 45, U. S. C. A., c. 8, the constitutionality of which was conclusively affirmed in Virginia Ry. Co. v. System Federation, 300 U. S. 515, 57 S. Ct. 592, 81 L. Ed. 789, and discussed by laudatory language in Labor Board v. Jones & Laughlin, *supra*, specifically provides in s. 152 (5): "No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement [fol. 82] promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way." The amendment at bar certainly does no more than exemplify and apply that policy to all employers and employees in this state.

Plaintiffs argued that the amendment impairs and restrains the exercise of civil rights of assembly and free speech guaranteed by the First Amendment and protected by the Fourteenth Amendment to the Constitution of the United States. The wording of the act is not ambiguous. We cannot by any construction conclude that it violates the First Amendment by abridging freedom of speech, or the press, or the right of assembly, or the right of petition to the government for redress. As a matter of fact, it preserves to all employees the right to organize and join a union and the right to bargain collectively without fear of reprisal. Instead of preventing or abridging rights of speech, press, assembly, or petition, guaranteed by the First Amendment, the amendment preserves it for all employees, not only to those who join but also to those who do not join a union. Therefore, the amendment does not abridge the privileges or immunities of any citizen of the United States in violation of the Fourteenth Amendment, but affirmatively protects those rights. See American Federation of Labor v. Watson, 60 F. Supp. 1010; State v. Whitaker, ——N.C.——

——, 45 S. E. 2d 860; American Federation of Labor v. American Sash & Door Co., ——Ariz.——, ——P. 2d——.

Plaintiffs argued that the amendment constituted class legislation and denied unions and union members equal protection of the laws, contrary to the Fourteenth Amendment. We cannot sustain that contention. The amendment prohibits no one from joining a union, but undertakes to [fol. 83] lawfully assert that neither membership nor non-membership in a union shall be a condition precedent to the right to work. It is inclusive of all employers and employees in this state. It does not deny the union member the equal protection of the law, but gives the non-union employee a protection of the law which he had not theretofore enjoyed. See American Federation of Labor v. Watson, *supra*.

The amendment complies strictly with the guiding principle most often stated by courts to the effect that: "* * * this constitutional guaranty requires that all persons shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." 12 Am. Jur., Constitutional Law, s. 469, p. 129.

As stated in Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923, and approved in Truax v. Corrigan, 257 U. S. 312, 333, 42 S. Ct. 124, 66 L. Ed. 254, 27 A. L. R. 375: "Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

In Hayes v. Missouri, 120 U. S. 68, 7 S. Ct. 350, 30 L. Ed. 578, the court, in speaking of the equal protection clause of the Fourteenth Amendment, said: "It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

It was said in Truax v. Corrigan, *supra*: "* * * the guaranty was intended to secure equality of protection not only for all but against all similarly situated. Indeed, protection is not protection unless it does so."

[fol. 84] In Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220, speaking of due process and the equality clause of the Fourteenth Amendment, the court said: "These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any dif-

ferences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws."

We come then to plaintiffs' contention that the amendment deprives them of rights and privileges under the due process clause of the Fourteenth Amendment. We conclude that it does not. In that connection, we are required to discuss and decide whether or not the amendment is within the police power of the state and whether or not it is reasonable and has a relationship to the public welfare. As related to legislation, it is generally held that due process is satisfied if there was legislative power to act on the subject matter, if that power was exercised in a reasonable and indiscriminatory manner, and if the act, being definite, has a reasonable relationship to a proper legislative purpose. 16 C. J. S., Constitutional Law, s. 569, p. 1156; Rein v. Johnson, 149 Neb. 67, 30 N. W. 2d 548.

It will be noted at the outset that by virtue of the Tenth Amendment, Constitution of the United States: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." That provision cannot be amended or obliterated by judicial decree, but only by the source from which it derived original validity.

Therefore, in construing a federal law, courts look to see if the power has been delegated, but in construing a state law they look to see if it has been prohibited, realizing that the people of a state, by reason of the sovereign power vested in them, may enact a law or alter and amend their [fol. 85] own constitution by the method prescribed in the instrument itself, subject, however, to every limitation or restraint lawfully imposed upon them by virtue of some authority derived from the Constitution of the United States. See 11 Am. Jur., Constitutional Law, s. 245, p. 966, et seq.

"Police power is the exercise of the sovereign right of a government to promote order, safety, health, morals, and the general welfare of society, within constitutional limits. * * * As applied to the powers of the states of the American Union, the term is also used to denote those inherent governmental powers which, under the federal system established by the constitution of the United States, are reserved to the several states." 16 C. J. S., Constitutional Law, s.

174, p. 537. See, also, 11 Am. Jur., Constitutional Law, s. 255, p. 986.

In Reid v. Colorado, 187 U. S. 137, 148, 23 S. Ct. 92, 47 L. Ed. 108, it was said: "It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed—that 'in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.' Sinnot v. Davenport, 22 How. 227, 243."

As recently as Placek v. Edstrom, 148 Neb. 79, 26 N. W. 2d 489, which involved the state par-check law, this court, in conformity with federal precedent, held that: "No provision of the Constitution of the United States was ever intended to take from states the right to properly exercise their police powers which generally extend to all the great [fol. 86] public needs which are lawfully recognized as immediately necessary to promote the public welfare."

It was said recently in Abeln v. City of Shakopee, —— Minn. ——, 28 N. W. 2d 642: "Clearly, the original Constitution did not deprive the states of their police power, which they might exercise for the protection of the public health, welfare, and morals. * * * No restraints were imposed upon the police power by the adoption of the Fourteenth Amendment."

As early as Wenhan v. State, 65 Neb. 394, 91 N. W. 421, in which the constitutionality of a statute regulating and limiting the hours of employment for female employees was sustained, this court said: "The police power of the state can not be put forward as an excuse for oppressive and unjust legislation, but it may be lawfully resorted to for the purpose of preserving the public health, safety or morals; and a large discretion is vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests."

Fansteel Metallurgical Corporation v. Lodge 66, 295 Ill. App. 323, 14 N. E. 2d 991, is authority for the proposition that Congress, by its enactment of the National Labor Re-

lations Act, did not deprive or attempt to deprive the states of their police power.

In Thomas v. Collins, 323 U. S. 516, 532, 65 S. Ct. 315, 89 L. Ed. 430, it was said: "That the State has power to regulate labor unions with a view to protecting the public interest is, as the Texas court said, hardly to be doubted. They cannot claim special immunity from regulation." See, also, Railway Mail Assn. v. Corsi, 326 U. S. 88, 65 S. Ct. 1483, 89 L. Ed. 2072, sustaining the New York anti-discrimination statute.

In Carpenters & Joiners Union v. Ritter's Cafe, *supra*, it [fol. 87] was said: "It is not for us to assess the wisdom of the policy underlying the law of Texas. Our duty is at an end when we find that the Fourteenth Amendment does not deny her the power to enact that policy into law."

In that opinion the court also said: "The right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces has not previously been doubted. See Mr. Justice Holmes in Aikens V. Wisconsin, 195 U. S. 194, 205, and Mr. Justice Brandeis in Truax v. Corrigan, supra, at 372, Dorchy v. Kansas, 272 U. S. 306, 311, and Senn v. Tile Layers Protective Union, 301 U. S. 468, 481. * * * We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants.' Thornhill v. Alabama, 310 U. S. 88, 103-04."

In Barbier v. Connolly, *supra*, it was said: "But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."

In Southern Pacific Co. v. Arizona, 325 U. S. 761, 65 S. Ct. 1515, 89 L. Ed. 1915, it was said: "Although the commerce clause conferred on the national government power to

[fol. 88] regulate commerce, its possession of the power does not exclude all state power of regulation. Ever since Wilson v. Black-Bird Creek Marsh Co., 2 Pet. 245, and Cooley v. Board of Wardens, 12 How. 299, it has been recognized that, in the absence of conflicting legislation by Congress, there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it."

In Parker v. Brown, 317 U. S. 341, 359, 63 S. Ct. 307, 87 L. Ed. 315, it was said: "The governments of the states are sovereign within their territory save only as they are subject to the prohibitions of the Constitution or as their action in some measure conflicts with powers delegated to the National Government, or with Congressional legislation enacted in the exercise of those powers. This Court has repeatedly held that the grant of power to Congress by the Commerce Clause did not wholly withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken."

At another point in the opinion, the court said: "Because of its local character also there may be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause. * * * There may also be, as in the present case, local regulations whose effect upon the national commerce is such as not to conflict but to coincide with a policy which Congress has established with respect to it."

In speaking of police power reserved to the states, it was said in the opinion of Chief Justice Taney in the License Cases, *supra:* "It is by virtue of this power that it legislates; and its authority to make regulations of commerce is [fol. 89] as absolute as its power to pass health laws, except in so far as it has been restricted by the constitution of the United States."

The above-quoted statement was approved in Nebbia v. New York, 291 U. S. 502, 525, 54 S. Ct. 505, 78 L. Ed. 940, 89 A. L. R. 1469, wherein it was also said: "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regu-

lation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. * * * The reports of our decisions abound with cases in which the citizen, individual or corporate, has vainly invoked the Fourteenth Amendment in resistance to necessary and appropriate exertion of the police power." See, also, 16 C. J. S., Constitutional Law, s. 569 (3), p. 1156.

The legislative and judicial history of the exercise of police power, together with a synopsis of its elasticity, adaptability, and appropriate application to the relationship between employers and employees, will be found in the dissenting opinion of Justice Brandeis in Truax v. Corrigan, *supra*. Like history will also be found in State v. Whitaker, *supra*, which held constitutional a statute of North Carolina, sections 2, 3, and 4 of which were similar to the Nebraska amendment in all material respects.

It was said in American Federation of Labor v. Watson, *supra*: "Labor and labor unions are affected with a public interest and are subject to the regulatory power of the states for any reasonable regulation which will not be in- [fol. 90] consistent with the Constitution of the United States and statutes enacted within the scope delegated by the Constitution to the Congress."

Without doubt the amendment was within the police power of this state. Therefore, we turn to the question of whether or not it is reasonable and has a relationship to the public welfare. In that connection we conclude that it is reasonable and that it does have such relationship.

In Gundling v. Chicago, 177 U. S. 183, 20 S. Ct. 633, 44 L. Ed. 725, it was said: "* * * unless the regulations are so utterly unreasonable and extravagent in their nature and purpose that the property and personal rights of the citizens are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the State to pass, and they form no subject for Federal interference."

It was said in the opinion of Justice McLean in the License Cases, *supra*: "In all matters of government, and

especially of police, a wide discretion is necessary. It is not susceptible of an exact limitation, but must be exercised under the changing exigencies of society. In the progress of population, of wealth, and of civilization, new and vicious indulgencies spring up, which require restraints that can only be imposed by the legislative power."

In Muller v. Oregon, 208 U. S. 412, 28 S. Ct. 324, 52 L. Ed. 551, a statute regulating and limiting the hours of labor for female employees was sustained. In the opinion it was said: "Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative ac- [fol. 91] tion, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge."

In West Coast Hotel Co. v. Parrish, 300 U. S. 379, 399, 57 S. Ct. 578, 81 L. Ed. 703, 108 A. L. R. 1330, it was said: "The legislature had the right to consider that its minimum wage requirements would be an important aid in carrying out its policy of protection. The adoption of similar requirements by many States evidences a deepseated conviction both as to the presence of the evil and as to the means adapted to check it. Legislative response to that conviction cannot be regarded as arbitrary or capricious, and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment."

We call attention to an appropriate statement appearing in Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398, 442, 54 S. Ct. 231, 78 L. Ed. 413, 88 A. L. R. 1481: "It is manifest from this review of our decisions that there has been a growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare. The settlement and consequent contraction of the public domain, the pressure of a constantly increasing density of population, the interrelation of the activities of our people and the com-

plexity of our economic interests, have inevitably led to an increased use of the organization of society in order to protect the very basis of individual opportunity. Where, in [fol. 92] earlier days, it was thought that only the concerns of individuals or of classes were involved, and that those of the State itself were touched only remotely, it has later been found that the fundamental interests of the State are directly affected; and that the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends.

"It is no answer to say that this public need was not apprehended a century ago, or to insist that what the provision of the Constitution meant to the vision of that day it must mean to the vision of our time. If by the statement that what the Constitution meant at the time of its adoption it means today, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning—'We must never forget that it is *a Constitution* we are expounding' (McCulloch v. Maryland, 4 Wheat. 316, 407)—'a constitution intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs.' Id. p. 415. When we are dealing with the words of the Constitution, said this Court in Missouri v. Holland, 252 U. S. 416, 433, 'we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. * * * The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.'

"Nor is it helpful to attempt to draw a fine distinction between the intended meaning of the words of the Con- [fol. 93] stitution and their intended application. When we consider the contract clause and the decisions which have expounded it in harmony with the essential reserved power of the States to protect the security of their peoples, we find no warrant for the conclusion that the clause has been warped by these decisions from its proper significance or that the founders of our Government would have inter-

preted the clause differently had they had occasion to assume that responsibility in the conditions of the later day. The vast body of law which has been developed was unknown to the fathers, but it is believed to have preserved the essential content and the spirit of the Constitution. With a growing recognition of public needs and the relation of individual right to public security, the court has sought to prevent the perversion of the clause through its use as an instrument to throttle the capacity of the States to protect their fundamental interests. This development is a growth from the seeds which the fathers planted. It is a development forecast by the prophetic words of Justice Johnson in Ogden v. Saunders, already quoted. And the germs of the later decisions are found in the early cases of the Charles River Bridge and the West River Bridge, *supra*, which upheld the public right against strong insistence upon the contract clause. The principle of this development is, as we have seen, that the reservation of the reasonable exercise of the protective power of the State is read into all contracts * * *."

In Duplex Printing Press Co. v. Deering, 254 U. S. 443, 488, 41 S. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196, Mr. Justice Brandeis in a dissent, said: "All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community. The conditions developed in industry may be such that those engaged in it [fol. 94] cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest, and to declare the duties which the new situation demands."

The people of this state initiated the amendment by original action, without legislative intervention, by filing petitions with the Secretary of State, which were signed by ten percent or more of the electors of the state, so distributed as to include five percent or more of the electors of each of two-fifths or more of the counties of the state. At the election the amendment was adopted by a vote of 212,443 For and 142,702 Against. It is common knowledge that its provisions and purposes, as well as the reasons for its adoption or rejection, were widely publicized and ably presented to the electorate of this state prior to the election. It was adopted after considerate and deliberate

action. Thus it was decided that its provisions were reasonable and necessary to safeguard the integrity of government and preserve the economic structure and security of the people for the protection of their welfare. With that decision, courts have no right to interfere.

As conditions arising out of powerful industries required legislative regulation thereof to protect first the public generally, and then labor itself, which legislation courts generally have sustained, so now the people of this and other states have evidently decided that conditions have arisen in powerful industries and powerful labor forces as well, requiring legislative regulation of them both in order to protect the public. The Labor Management Relations Act of 1947 was ostensibly enacted for that purpose. As a basis for its enactment, Congress recognized, as disclosed by its committee reports, that such conditions were nation-wide in scope, and specifically provided for the integration of state laws therewith, characterized by the amendment al- [fol. 95] ready adopted in this state.

We take judicial notice of the fact that at this writing no less than 18 states have enacted similar legislation, 6 by constitutional enactment and 12 by statutory provisions.

Florida's constituitonal amendment was sustained by an able opinion in American Federation of Labor v. Watson, *supra*. True, upon appeal therefrom, the Supreme Court of the United States (327 U. S. 582) refused to finally pass upon the constitutionality of the Florida amendment until it had been authoritatively construed by the state court, but nevertheless the opinion established a yardstick for its constitutional measurement which affirmatively parallels and sustains our construction of the amendment in the case at bar.

The Supreme Court of Arizona in American Federation of Labor v. American Sash & Door Co., *supra*, sustained the constitutionality of that state's constitutional amendment, which is very similar to the one here involved.

Likewise, the Supreme Court of Tennessee, in Mascari v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, — Tenn. —, — S. W. 2d —, sustained the constitutionality of that state's legislative act, sections 1 and 2 of which are almost identical with this state's constitutional amendment.

In the light of the foregoing, we conclude that the amendment is a reasonable and valid exercise of the police power of the state, and as such has a real and substantial relation to its object, the public welfare.

Bearing in mind the foregoing related propositions of law, we turn to the question whether the amendment impairs the obligations of existing contracts in violation of [fol. 96] article I, section 10, Constitution of the United States. We conclude that it does not.

Wenham v. State, *supra*, involved the constitutionality of an act regulating and limiting the hours of employment for female employees. In that opinion this court specifically held that such an act was not class legislation, and that the act was only a fair and reasonable exercise of the police power, in that it did not prohibit the right of contract but merely regulated the same in a reasonable manner as in the case at bar. In that connection, the court said: "The right of contract itself is subject to certain limitations which the state may lawfully impose in the exercise of its police power, and this power has been greatly expanded in its application during the past century, * * *."

In Patterson v. Bark Eudora, 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002, it was said: "That there is, generally speaking, a liberty of contract which is protected by the Fourteenth Amendment may be conceded, yet such liberty does not extend to all contracts. As said in Frisbie v. United States, 157 U. S. 160, 165: 'While it may be conceded that, generally speaking, among the inalienable rights of the citizen is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may * * * restrain all engaged in any employment from any contract in the course of that employment which is against public policy.'"

As stated in Muller v. Oregon, *supra*: "It is undoubtedly true, as more than once declared by this court, that the general right to contract in relation to one's business is part of the liberty of the individual, protected by the Fourteenth Amendment to the Federal Constitution; yet it is [fol. 97] equally well settled that this liberty is not absolute and extending to all contracts, and that a State may, without conflicting with the provisions of the Fourteenth

Amendment, restrict in many respects the individual's power of contract."

In Nebbia v. New York, *supra*, it was said: "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest."

In speaking of deprivation of freedom of contract, it was said in West Coast Hotel Co. v. Parrish, *supra*: "What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.

"This essential limitation of liberty in general governs freedom of contract in particular. More than twenty-five [fol. 98] years ago we set forth the applicable principle in these words, after referring to the cases where the liberty guaranteed by the Fourteenth Amendment had been broadly described:

"'But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations

and prohibitions imposed in the interests of the community." Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, 567.

"This power under the Constitution to restrict freedom of contract has had many illustrations. That it may be exercised in the public interest with respect to contracts between employer and employee is undeniable." Many such illustrations are cited and discussed by the court in its opinion at page 393.

In Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685, 17 S. Ct. 718, 41 L. Ed. 1165, it was said: "'But into all contracts, whether made between States and individuals, or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the preexisting and higher authority of the laws of nature, of nations or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all and need never, therefore, be carried into express stipulation, for this could add nothing to their force.'"

In that regard, Home Bldg. & Loan Assn. v. Blaisdell, *supra*, said: "* * * the State also continues to possess [fol. 99] authority to safeguard the vital interests of its people. It does not matter that such legislation appropriate to that end 'has the result of modifying or abrogating contracts already in effect.' * * * Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile,—a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court."

In Indiana ex rel. Anderson v. Brand, 303 U. S. 95, 108, 58 S. Ct. 443, 82 L. Ed. 685, 113 A. L. R. 1482, it was said: "Our decisions recognize that every contract is made subject to the implied condition that its fulfillment may be frustrated by a proper exercise of the police power * * *."

In Union Dry Goods Co. v. Georgia Public Service Corpo-

ration, 248 U. S. 372, 39 S. Ct. 117, 63 L. Ed. 309, 9 A. L. R. 1420, it was said: "That private contract rights must yield to the public welfare, where the latter is appropriately declared and defined and the two conflict, has been often decided by this court."

In Manigault v. Springs, 199 U. S. 473, 26 S. Ct. 127, 50 L. Ed. 274, it was said: "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers * * * for the general good of the public, though contracts previously entered into by individuals may thereby be affected."

In Atlantic Coast Line R. R. Co. v. City of Goldsboro, [fol. 100] 232 U. S. 548, 558, 34 S. Ct. 364, 58 L. Ed. 721, it was said: "* * * it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of over-riding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise."

In the recent case of East New York Savings Bank v. Hahn, 326 U. S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A. L. R. 1279, it was said: "The formal mode of reasoning by means of which this 'protective power of the State,' * * * is acknowledged is of little moment. It may be treated as an implied condition of every contract and, as such, as much part of the contract as though it were written into it, whereby the State's exercise of its power enforces, and does not impair, a contract. A more candid statement is to recognize as was said in Manigault v. Springs, *supra*, that the power, 'which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the * * * general welfare of the people, and is paramount to any rights under contracts between individuals.' * * * Once we are in this domain of the reserve power of a State we must respect the 'wide discretion on the part of the legislature in determining what is and what is not necessary.' * * * So far as the constitutional issue is concerned, 'the power of the

State when otherwise justified,' • • • is not diminished because a private contract may be affected."

In Hudson County Water Co. v. McCarter, 209 U. S. 349, 28 S. Ct. 529, 52 L. Ed. 828, it was said: "One whose rights, such as they are, are subject to state restriction, cannot re- [fol. 101-102] move them from the power of the State by making a contract about them."

It is evident that parties cannot lawfully deprive the state of its police power simply by making a contract between themselves. Since this power of the state to pass legislation which may affect existing contracts is implied in every contract drawn, then we must read the contract between plaintiff, Lincoln Federal Labor Union, and defendant, Northwestern Iron and Metal Company, as if it actually provided that it was subject to any legislation which the state might adopt under its police power. With such sovereign power implied in the contract, the amendment in question did not impair the existing provisions in their contract but was actually a part of it, and therefore not in violation of any provision of the Federal Constitution.

For the reasons heretofore stated, we conclude that the amendment is a reasonable, proper, and valid exercise of the police power of the state. As such, it is not in conflict with or repugnant to any federal law, but integrated therewith, and does not violate any provision of the Constitution of the United States, but on the contrary guarantees all those rights to all persons whomsoever within this state, whether employers or employees, union members or nonunion members.

Therefore, the judgment of the trial court should be and hereby is affirmed.

Affirmed.

[fol. 103] IN THE SUPREME COURT OF NEBRASKA

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 1, 1948

To the Honorable Robert G. Simmons, Chief Justice of the Supreme Court of Nebraska:

Your petitioners, Lincoln Federal Labor Union #19129, American Federation of Labor, Nebraska State Federation of Labor, and Henry Reichel, individually and as President of said Lincoln Federal Labor Union #19129, respectfully show:

1. The petitioner, Lincoln Federal Labor Union #19129, is a local union functioning in the City of Lincoln, Nebraska, and affiliated with both the petitioner Nebraska State Federation of Labor and petitioner American Federation of Labor. The petitioner, Henry Reichel, is President of said local union and an employee of the respondent, Northwestern Iron and Metal Company. On February 19, 1947, [fol. 104] petitioners filed a complaint in the District Court of Lancaster County seeking a declaratory judgment and equitable relief in respect to the application as against them of an amendment to the Constitution of the State of Nebraska, adopted in November of 1946 and commonly referred to as the "Anti-Closed-Shop Amendment," and also in respect to the rights of such petitioners, under a union-shop agreement entered into prior to the effective date of such amendment. Such amendment purported to outlaw all existing and future closed-shop or union-security agreements or other type of agreement requiring membership in a labor organization as a condition of employment. The complaint named as defendants an employer, the Northwestern Iron and Metal Company, with which the petitioner Lincoln Federal Labor Union #19129 had a union-shop agreement, an individual, Dan Giebelhouse, who was an employee of the Company and whom the Company refused to discharge because of his failue to maintain his membership in the union, and the State of Nebraska. The Nebraska Small Business Men's Association, an unincorporated organization of business firms, was granted leave to participate as an intervenor. The complaint alleged that the amendment, in so far as it purported to outlaw the union-shop agreement between the union and the Company, entered into prior to the effective date of the amendment, and to prevent the union from obtaining the discharge of Giebelhouse thereunder as required by the contract, was illegal and void as contrary to the federal Constitution.

2. The defendants moved to dismiss the complaint on the ground that, since the amendment was constitutional, the

complaint stated no cause of action. The trial court granted such motion to dismiss for such reason.

3. The petitioners thereupon appealed to this Court from the judgment granting the motion to dismiss the complaint, and on March 19, 1948, this Court entered a decision and [fol. 105] judgment affirming the judgment below. This Court is the highest court of Nebraska in which a decision in this suit can be had, and this Court's decision and decree in this cause is final.

4. In this cause there was drawn in question the validity of the so-called "Anti-Closed-Shop Amendment" to the Nebraska Constitution, adopted in 1946, on the ground that said Amendment was repugnant to the Constitution and Laws of the United States; and the decision of this Court was in favor of the validity of such Amendment, notwithstanding your petitioners' contention, made both before the trial court and this Court, that the said Amendment violated the First and Fourteenth Amendments to the United States Constitution and Article I, Section 10, thereof.

5. The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the assignment of errors, filed herewith, pursuant to Rules 9 and 46 of the Rules of the Supreme Court of the United States; and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States, which statement demonstrates that the federal questions are substantial and that the issues are of sufficient importance to warrant, indeed to require, consideration and determination by the Supreme Court of the United States.

Wherefore, your petitioners pray for the allowance of an appeal from the said Supreme Court of Nebraska, the highest court of said state in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the decision and judgment or decree of the said Supreme Court of Nebraska may be examined and reversed, and also pray that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of Nebraska, under his hand and seal [fols. 106-107] of said Court, may be sent to the Supreme

Court of the United States, as provided by law, and that an order be made touching the security to be required of the petitioners, and that the bond for costs tendered by the petitioners be approved.

Bernard S. Gradwohl, Sharp Building, Lincoln 8, Nebraska; J. Albert Woll, Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D. C., Counsel for Petitioners.

Dated this 1st day of April, 1948.

[File endorsement omitted.]

[fol. 108] IN THE SUPREME COURT OF NEBRASKA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 1, 1948

Come now the above named appellants, and as appellants to the Supreme Court of the United States from the decision and judgment or decree heretofore entered herein, assign as error the following:

1. The Supreme Court of Nebraska erred in failing to hold that the so-called "Anti-Closed-Shop" Amendment, by forbidding appellants under any and all circumstances, to enter into any type of union-security agreement and by denying the union appellants their only proven and practical method of protecting their standards, stabilizing their gains, and obtaining an adequate share of the joint product of capital and labor, among other things, deprived such appellants of rights, liberties and freedoms protected under [fol. 109] the Fourteenth Amendment to the United States Constitution, and in failing to hold that such absolute and unconditional proscriptions against entering into union-security agreements contained in the "Anti-Closed-Shop" Amendment were arbitrary, unreasonable, excessive and without rational basis.

2. The Supreme Court of Nebraska erred in failing to hold that said "Anti-Closed-Shop" Amendment arbitrarily

and unreasonably impaired the obligations of contracts entered into prior to the adoption of the said Amendment, to which contracts several of the appellants were parties, all in violation of Article I, Section 10, of the United States Constitution.

3. The Supreme Court of Nebraska erred in failing to hold that said "Anti-Closed-Shop" Amendment, by favoring non-union workers over union workers, and by permitting employers to retain all their traditional methods of consolidating gains against competition of other employers and against demands of organized labor, while denying to union members their one method of improving their conditions and consolidating their gains against the competition of non-union workers and against the competition of employers for a fair share in the national income, all without providing an adequate substitute method, deprived the union appellants of the equal protection of the law, contrary to the Fourteenth Amendment to the United States Constitution.

4. The Supreme Court of Nebraska erred in failing to hold that said "Anti-Closed-Shop" Amendment, by outlawing the union-security agreement, and thus imperiling the very existence of labor organizations and their ability adequately to function in the interests of working people, restrained the union appellants in the exercise of fundamental rights of working people protected as a concomitant of the rights of speech and assembly under the First Amendment, and protected against invasion by the State under [fols. 110-161] the Fourteenth Amendment.

5. The Supreme Court of Nebraska erred in holding that the said "Anti-Closed-Shop" Amendment is constitutional, valid and enforceable, both on its face and as applied in the present case, under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 10, thereof; in failing to hold to the contrary; in affirming the judgment of the trial court dismissing appellants' complaint; and in failing to grant the relief requested.

Wherefore, on account of the errors hereinbefore assigned, petitioners pray that the said decision and decree of judgment of the Supreme Court of Nebraska, dated the

19th day of March, 1948, in the above entitled cause be reversed and judgment entered in favor of these appellants.

Bernard S. Gradwohl, Sharp Building, Lincoln 8, Nebraska; J. Albert Woll, Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D. C., Counsel for Petitioners.

Dated this 1st day of April, 1948.

[File endorsement omitted.]

[fol. 162] IN THE SUPREME COURT OF NEBRASKA

[Title omitted]

ORDER ALLOWING APPEAL—Filed April 3, 1948

The petition of Lincoln Federal Labor Union #19129, American Federation of Labor, Nebraska State Federation of Labor, and Henry Reichel, individually and as President of said Lincoln Federal Labor Union #19129, the appellants in the above entitled cause, for an appeal in the above cause to the Supreme Court of the United States from the decision and decree of the Supreme Court of Nebraska, having been filed with the Clerk of this Court and presented herein, accompanied by assignments of error and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final decision and decree, dated the 19th day of March, 1948, of the [fols. 163-164] Supreme Court of Nebraska, as prayed in said petition, and that the Clerk of the Supreme Court of Nebraska shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of said Court, a true copy of the material parts of the record herein, which shall be designated by praecipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered that the said appellants shall give a good and sufficient bond for costs in the sum of $1000.00 Dollars, that said appellants shall prosecute said appeal to the effect and answer all costs if they fail to make their plea good.

Robert G. Simmons, Chief Justice of the Supreme Court of Nebraska.

Dated this 3rd day of April, 1948.

[File endorsement omitted.]

[fols. 165-167] Citation in usual form showing service on Ralph W. Slocum, et al., filed April 8, 1948, omitted in printing.

[fols. 168-171] Bond on appeal for $1,000.00 approved and filed April 6, 1948, omitted in printing.

[fol. 172] IN THE SUPREME COURT OF NEBRASKA

[Title omitted]

STIPULATION FOR TRANSCRIPT OF RECORD—Filed April 8, 1948

To the Clerk of the Supreme Court of Nebraska:

Kindly prepare for transmittal to the Supreme Court of the United States a true copy of the entire record in this case, both as on appeal to this Court and to the Supreme Court of the United States, and including the decision and decree or judgment of the Supreme Court of Nebraska. More specifically, such record shall include the following:

1. Petition.
2. Motions of defendants Northwestern Iron and Metal Company and Dan Giebelhouse and of intervenor Nebraska Small Business Men's Association for judgment on the pleadings.
3. Demurrer of State of Nebraska.

[fol. 173] 4. Memorandum and order granting motion on pleadings and demurrer.

5. Petition in intervention and order allowing same.
6. Judgment; Motions for New Trial and Order Overruling same.
7. Notice of Appeal; and Cash Deposit of $75.00.
8. Appellants' Assignment of Errors (as appears in brief or otherwise).
9. Decision of Supreme Court of Nebraska.
10. Judgment of Supreme Court of Nebraska.
11. Petition for Allowance of Appeal.
12. Assignment of Errors.
13. Statement of Jurisdiction.
14. Bond on Appeal.
15. Proof of Service of Papers required by Rule 12.
16. Order allowing Appeal.
17. Citation to Appellees.
18. Return on Citation to Appellees.
19. Stipulation for Transcript of Record.
20. Notice of Right to File Statement making against Jurisdiction.
21. Proof of Service of Appeal Papers.
22. Clerk's Certificate.
23. Entries Showing Case Submitted to Supreme Court of Nebraska on Briefs and Oral Argument of the Parties.

Respectfully submitted, Bernard S. Gradwohl, Sharp Building, Lincoln 8, Nebraska; J. Albert Woll, [fols. 174-180] Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D. C.; Counsel for Petitioners.

Dated this 6 day of April, 1948.

Agreed to by Swarr, May, Royce, Smith & Story.

Ralph Solcum, Louis W. Finkelstein, Robert A. Nelson, Asst. Atty. Gen. of Nebraska; Attorneys for Appelle-s.

[fol. 181] Return to order allowing appeal omitted in printing.

[fol. 182] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 183] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

APPELLANTS' STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed April 23, 1948

Come now the appellants and adopt their assignments of error as their statement of the points to be relied upon, and represent that the whole of the record, as filed, is necessary for the consideration of the case, except the duplicate order granting appeal appearing on pp. 159-160 of the record as certified.

J. Albert Woll, Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D. C.; Bernard S. Gradwohl, Sharp Building, Lincoln, Nebraska.

Dated this 22nd day of April, 1948.

[fol. 184] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—May 24, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument following American Federation of Labor et al. vs. American Sash & Door Company et al., No. 626.

Endorsed on Cover: File No. 52,991. Nebraska, Supreme Court. Term No. 761. Lincoln Federal Labor Union #19129, American Federation of Labor, Nebraska State Federation of Labor, et al., Appellants, vs. Northwestern Iron and Metal Company, Dan Diebelhouse, State of Nebraska and Nebraska Small Business Men's Association. Filed April 22, 1948. Term No. 761 O. T. 1947.